

Effective as of 1 January 2011, Version 2.6

Subject: Whistleblower Regulations

Procedure for dealing with suspicions of misconduct

Appendices: 1

Explanation

The Civil Servants Act imposes an obligation on government organisations to establish a procedure for reporting misconduct. Misconduct or suspicions of this must always be raised internally. This enables the parties responsible to address inadequacies. This concerns a primary standard that arises directly from the principle of administrative responsibility. It is in fact no more than self-evident that an employee who knows of such matters should discuss them internally. This is action that befits a good employee. Deliberately withholding such information is unacceptable.

Such matters must first be raised internally with the employee's immediate supervisor. The supervisor will report the misconduct to the management, which will investigate the matter and if possible, take a decision. If an employee is dissatisfied with this process or has serious reasons for not reporting misconduct via the hierarchical line, a procedure can be started via the Confidential Advisory Committee. The confidential adviser may also play a role throughout this process. The principle is that through this procedure, the problems raised will be solved with due care and integrity.

In the exceptional situation in which an employee hears no more in response to his or her report, the course of legal action under the General Administrative Law Act lies open.

If an employee observes (or suspects) misconduct by a member of the management, the employee can inform the Supervisory Board (via the confidential adviser or otherwise). The Supervisory Board decides how this report will be handled.

1. General

Article 1 Definitions

The following definitions apply for the purposes of these regulations:

Person concerned: an employee in the service of LVNL.

Confidential Advisory Committee: the Confidential Advisory Committee within the meaning of Article 4 of these regulations.

Executive Committee: the LVNL body responsible for the day-to-day management of LVNL, pursuant to Article 5.26 of the Aviation Act.

Supervisory Board: the body that supervises the work of the Executive Committee and supports it with advice, pursuant to Article 5.32 of the Aviation Act.

LVNL: Air Traffic Control the Netherlands, as formed pursuant to the Aviation Act

Confidential adviser: the employee appointed as such within LVNL.

Suspicion: a suspicion of misconduct within the LVNL organisation, based on reasonable grounds, concerning:

- a. a serious criminal offence;
- b. a grievous infringement of regulations or policy rules;
- c. misleading the judicial authorities;
- d. a serious risk to public health, safety or the environment; or
- e. deliberate withholding of information on these matters.

2. Internal procedure

Article 2 Internal reporting to the immediate supervisor or confidential adviser

1. The person concerned reports a suspicion of misconduct internally to his or her immediate supervisor or, if he or she regards a report to the immediate supervisor as undesirable, to the confidential adviser who refers the person concerned to the corporate social services department.
2. The immediate supervisor or corporate social services department shall ensure that the Executive Committee is informed immediately of a reported suspicion of misconduct and of the date on which the report was received. If the person concerned has reported the suspicion to the confidential adviser, the latter, if desirable, also informs the immediate supervisor of the person concerned.
3. In response to the report of suspected misconduct, the Executive Committee shall immediately open an investigation.
4. The Executive Committee sends the person who has reported a suspicion of misconduct within the organisation a confirmation of receipt. The confirmation of receipt states the reported suspicion of misconduct and the date on which the person concerned reported the suspicion to his or her immediate supervisor or the corporate social services department.
5. The Executive Committee decides whether the Supervisory Board should be notified of an internal report of suspected misconduct. The Executive Committee always notifies the Confidential Advisory Committee of this internal report (for information purposes).
6. By way of derogation from paragraphs 1 to 5, the person concerned may report a suspicion of misconduct directly to the Confidential Advisory Committee if serious interests obstruct the application of paragraphs 1 to 5.

Article 3 An opinion

1. Within a period of eight weeks of the date of the internal report of a suspicion of misconduct, the person concerned is notified by or on behalf of the Executive Committee, in writing, of a substantive opinion regarding the reported suspicion of misconduct.

2. If the opinion cannot be given within eight weeks, the person concerned is notified of this by or on behalf of the Executive Committee, as well as of the term within which he or she can expect an opinion.

3. The person concerned may report the suspicion of misconduct to the Confidential Advisory Committee if:

- a. he/she disagrees with the opinion;
- b. he/she has not received an opinion within the required term referred to in paragraphs 1 and 2; or
- c. in view of all the circumstances, the term referred to in paragraph 2 is unreasonably long; or
- d. he/she takes the view that there is a situation as referred to in Article 2(6).

3. The LVNL Confidential Advisory Committee

Article 4 Installation and duties of the Committee

1. A Confidential Advisory Committee is appointed within LVNL.
2. In relation to these regulations, the tasks of the Confidential Advisory Committee are to investigate suspicions of misconduct reported by a person concerned and to advise the Executive Committee on this.
3. The Confidential Advisory Committee also has a duty to handle complaints relating to inappropriate forms of behaviour, as described in PR-15.
4. All costs incurred by the Confidential Advisory Committee for an investigation are borne by the Executive Committee.

Article 5 Membership of the Committee

1. The Confidential Advisory Committee consists of at least five members, including a chairman. These members may not all be men or all be women. For each report of suspected misconduct, at least three members of the Confidential Advisory Committee are appointed to investigate the report of suspected misconduct and to advise the Executive Committee on this.
2. The Confidential Advisory Committee takes decisions by a majority of the votes cast.
3. The members of the Confidential Advisory Committee are appointed, suspended and dismissed by the Executive Committee. One member and one deputy member of the Confidential Advisory Committee are appointed on the nomination of the Works Council.
4. A member of the Confidential Advisory Committee will be replaced if he or she is involved in any way, directly or indirectly, in the suspected misconduct regarding which the internal report has been made.

Article 6 Secretary

The Confidential Advisory Committee is supported by a secretary who is appointed, suspended or dismissed from his or her duties by the Executive Committee.

Article 7 Annual report

1. The Confidential Advisory Committee shall prepare an annual report each year.
2. In an anonymised manner and in observance of the relevant statutory provisions, that report shall state the following with regard to each department:
 - a. the number and the nature of the reports of suspected misconduct made;
 - b. the number of reports that did not lead to an investigation;
 - c. the number of investigations that the Confidential Advisory Committee conducted; and
 - d. the number of recommendations that it issued and the nature of those recommendations.
3. This annual report shall be sent to the Executive Committee and the Supervisory Board.
4. The Executive Committee shall also report to the Supervisory Board the number of suspicions of misconduct that it handled independently, without the intermediary of the Confidential Advisory Committee.

Article 8 Confirmation of receipt and the investigation

1. The Confidential Advisory Committee shall confirm receipt of a report of suspected misconduct to the person who reported the suspicions to it and shall notify the immediate supervisor and the Executive Committee of the report.
2. If the Confidential Advisory Committee considers this necessary for the performance of its tasks, it shall open an investigation.
3. The Confidential Advisory Committee may assign the investigation to one of its members.
4. If, due to its confidential nature, the content of the information provided should remain known only to the Confidential Advisory Committee, this shall be notified to the Confidential Advisory Committee. The Confidential Advisory Committee shall apply a level of security to this information that complies with the standards applied for the relevant information within LVNL.
5. The Confidential Advisory Committee has the right to obtain information everywhere and from anyone within the LVNL organisation.

Article 9 Inadmissibility

1. The Confidential Advisory Committee shall declare a report to be inadmissible if:
 - a. there is no misconduct on which the Confidential Advisory Committee advises; or
 - b. the person concerned does not show that he or she first raised the suspicion internally, as referred to in Article 2(1), unless a situation as referred to in Article 2(6) exists; or

c. if the person concerned has raised the suspicion internally, as prescribed in Article 2(1), but a reasonable term since the internal report has not yet expired.

2. A reasonable term, as referred to in paragraph 1c, has expired if:

a. the person who reported suspected misconduct receives no opinion from the Executive Committee within eight weeks of the date of the internal report, unless the Executive Committee notifies the person concerned that he or she cannot expect an opinion within eight weeks;

b. no term, as referred to in Article 3(2), has been set by the Executive Committee; or

c. the term set by the Executive Committee, as referred to in Article 3(2), has expired without the person concerned being notified of an opinion by the Executive Committee; or

d. in view of all the circumstances, the term set by the Executive Committee, as referred to in Article 3(2), is not reasonable.

3. The Confidential Advisory Committee shall notify the Executive Committee and the person who reported suspected misconduct to the Confidential Advisory Committee that a report has been found inadmissible, stating its reasons.

Article 10 Advisory report of the Confidential Advisory Committee

1. If the report of suspected misconduct is admissible, the Confidential Advisory Committee shall record its findings concerning the report of suspected misconduct in an advisory report addressed to the Executive Committee at the earliest opportunity.

2. The person who reported a suspicion of misconduct to the Confidential Advisory Committee will receive a copy of the advisory report, taking account of any confidential nature of the information provided to the Confidential Advisory Committee and of the relevant applicable statutory provisions.

3. The advisory report will be disclosed in anonymised form, taking account of any confidential nature of the information provided to the Confidential Advisory Committee and of the relevant applicable statutory provisions, in a manner that the Confidential Advisory Committee considers appropriate, unless serious interests oppose this. The costs of disclosure shall be borne by the Executive Committee.

4. In response to the advisory report, the Executive Committee shall notify the person who reported a suspicion of misconduct to the Confidential Advisory Committee of whether the recommendations in the advisory report will be followed.

4. Report of suspected misconduct by a member of the Executive Committee

Article 11

1. The person concerned reports a suspicion of misconduct by a member of the Executive Board to the Chairman of the Supervisory Board or, if he or she regards a report to the Chairman of the Supervisory Board as undesirable, to the confidential adviser who refers the person concerned to the corporate social services department.

2. The Supervisory Board decides whether the report will be handled by the Confidential Advisory Committee or in some other way.

5. Legal protection

Article 12

1. A person who, in observance of the provisions of these procedural rules, has reported a suspicion of misconduct, shall not be prejudiced in his position in any way as a consequence of having done so, in as far as he or she acted in good faith and does not benefit personally from the misconduct or by reporting it.

2. The confidential adviser may not suffer any adverse effects in any way as a result of the performance of his/her duties pursuant to these regulations.

6. Final provisions

Article 13 Entry into force

These regulations enter into force on 1 May 2009 and lapse as soon as statutory regulations concerning the same subject matter enter into force.

Article 14 Citation

These regulations may be cited as the “whistleblowers’ regulations”.