



Administrative instruction (DAJ) n° 35/Rev 1 of 15 November 2017

Subject: Protection of individuals who report misconduct and cooperate with duly authorized audits or investigations

I. Introduction

1 This administrative instruction describes the procedures in place to report misconduct and to protect staff who report misconduct or cooperate with duly authorized audits or investigations, in accordance with staff regulation 1.4.4 and staff rule 101.3.3. For the purpose of this administrative instruction, the term staff member refers to any member of staff, regardless of the type of appointment or its duration, and non-staff members such as consultants, contractor, seconded staff or interns.

II. General

2 It is the duty of staff members and non-staff members to report any breach of the Union's regulations and rules to the officials whose responsibility it is to take appropriate action. An individual who makes such a report in good faith has the right to be protected against retaliation.

3 It is also the duty of staff members to cooperate with duly authorized audits and investigations. An individual who cooperates in good faith with an audit or investigation has the right to be protected against retaliation.

4 Any violation by a staff member of his or her obligations under the Charter of the United Nations, the Staff Regulations and Rules or any other administrative text (e.g. Financial Regulations, Rules on Financial Administration, or Standards of Conduct for the International Civil Service) constitutes misconduct, including any request or instruction from any staff member to violate the above-mentioned rules, regulations or standards.

5 Retaliation against individuals who have reported misconduct or who have cooperated with audits or investigations violates the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the Union in view.

6 Retaliation means any direct or indirect detrimental action recommended, threatened or taken against an individual engaged in an activity protected by this administrative instruction. When established, retaliation is in itself misconduct.

III. Scope of application

7 Protection against retaliation applies to any staff member (regardless of the type of appointment or its duration), and non-staff (including support staff, seconded staff, contractors and interns) of the International Bureau who:

- a reports misconduct in good faith as soon as possible and not later than six years after the individual becomes aware of the misconduct. The individual must also submit information or evidence to support a reasonable belief that misconduct has occurred; or
- b cooperates in good faith with a duly authorized investigation or audit.

8 This administrative instruction is without prejudice to the legitimate application of regulations, rules and administrative procedures, including those governing evaluation of performance, non-extension or termination of appointment. However, the burden of proof shall rest with the International Bureau, which must prove by clear and convincing evidence that the same action would have been taken in the absence of the protected activity referred to in paragraph 7 above.

9 The transmission or dissemination of unsubstantiated rumours is not a protected activity. Making a report or providing information that is intentionally false or misleading constitutes misconduct and may result in disciplinary or other appropriate action.

IV. Reporting misconduct through established internal mechanisms¹

10 Except as provided in section V below, reports of misconduct should be made through the established internal mechanisms:

- a the Internal Auditor, in the case of allegations of fraud, presumptive fraud or mismanagement; or
- b the official responsible for receiving complaints of harassment (administrative instruction No. 34/2011), in the case of harassment; or
- c the relevant director or supervisor in other cases.

11 The confidentiality of the individual's identity and all communications through those channels are protected to the maximum extent possible.

V. Reporting misconduct through external mechanisms

12 Notwithstanding Staff Rule 101.3, paragraph 3, protection against retaliation will be extended to an individual who reports misconduct to an entity or individual outside the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:

- a Such reporting is necessary to avoid:
 - i a significant threat to public health and safety; or
 - ii substantive damage to the Union's operations; or
 - iii violations of national or international law; and
- b The use of internal mechanisms is not possible because:
 - i at the time the report is made, the individual has grounds to believe that he or she will be subjected to retaliation by the person(s) he or she should report to pursuant to the established internal mechanism; or
 - ii it is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) he or she should report to pursuant to the established internal mechanisms; or
 - iii the individual has previously reported the same information through the established internal mechanisms, and the Union has failed to inform the individual in writing of the status of the matter within six months of such a report; and
- c The individual does not accept payment or any other benefit from any party for such report.

¹ The mechanism applicable in cases of misconduct by elected officials is governed by Executive Council decision CE 1/1977

VI. Protection against retaliation

13 Individuals who believe that retaliatory action has been taken against them because they have reported misconduct or cooperated with a duly authorized audit or investigation should forward all information and documentation available to them to support their complaint to the Ethics Office as soon as possible. Complaints may be made in person, by regular mail, by e-mail or by fax.

14 The functions of the Ethics Office with respect to protection against retaliation for reporting misconduct or cooperating with a duly authorized audit or investigation are as follows:

- a To receive complaints of retaliation or threats of retaliation.
- b To keep a confidential record of all complaints received.
- c To conduct a preliminary review of the complaint to determine if:
 - i the complainant is engaged in a protected activity; and
 - ii there is a *prima facie* case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.

15 The Ethics Office will seek to complete its preliminary review as quickly as possible, that is, within 30 days of receiving the complaint of retaliation in normal cases, and within 45 days in exceptional cases.

16 All units and staff members shall cooperate with the Ethics Office and provide access to all records and documents requested by the Ethics Office, except for medical records that are not available without the express consent of the staff member concerned, and internal audit records that are subject to confidentiality requirements. Reports of the Appeals Committee shall be routinely sent to the Ethics Office unless the appellant objects.

17 If the Ethics Office finds that there is a credible case of retaliation or threat of retaliation, it will immediately notify the complainant in writing that the matter has been referred to investigation. After consulting the complainant, it will refer the matter in writing to either the Internal Auditor or the investigation unit of the Internal Auditor of an organization of the UN common system, such as the UN Office of Internal Oversight Services (OIOS) for investigation (hereinafter the official to whom the investigation is assigned). The official to whom the investigation was assigned will seek to complete his or her investigation and submit his report to the Ethics Office as quickly as possible, that is, within 90 days in normal cases, and within 120 days in exceptional cases.

18 Pending the completion of the investigation, the Ethics Office may recommend that the Director General take appropriate measures to safeguard the interests of the complainant, including but not limited to temporary suspension of the implementation of the action reported as retaliatory and, with the consent of the complainant, temporary reassignment of the complainant within or outside the complainant's office or placement of the complainant on special leave with full pay.

19 Once the Ethics Office has received the investigation report, it will inform the complainant in writing of the outcome of the investigation and make its recommendations on the case to the supervisor concerned and the Director General. Those recommendations may include disciplinary actions to be taken against the retaliator.

20 If the Ethics Office finds that there is no credible case of retaliation or threat of retaliation, but that there is an interpersonal problem within a particular office, it will advise the complainant of the informal dispute resolution mechanisms available to staff of the Union.

21 If the Ethics Office finds that there is a managerial problem based on the preliminary review of the complaint or the record of complaints relating to a particular directorate, programme or other organizational unit of the International Bureau, it will advise the director or supervisor of the unit concerned and, if it considers it necessary, the Human Resources Directorate.

VII. Protection of the person who suffered retaliation

22 If retaliation against an individual is established, the Ethics Office may, after taking into account the report made by the official to whom the investigation was assigned or the opinion of other concerned units and after consultation with the individual who has suffered retaliation, recommend to the director or supervisor concerned appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action.

23 Should these measures not be sufficient or should the Ethics Office not be satisfied with the response from the director or supervisor concerned, it may make a recommendation to the Director General as to the measures to be taken. Such measures may include, but are not limited to, the rescission of the retaliatory decision, including reinstatement, or, if requested by the individual, transfer to another unit or function for which the individual is qualified, independently of the person who engaged in retaliation. The Director General will provide a written response on the recommendations of the Ethics Office to the Ethics Office and the supervisor concerned within a reasonable period of time not exceeding one month.

24 The procedures set out in this administrative instruction are without prejudice to the rights of an individual who has suffered retaliation to seek redress through the internal recourse mechanisms. Moreover, an individual may use any such internal recourse mechanism to raise a violation of this administrative instruction or to appeal any decision taken under this instruction.

VIII. Prohibition of retaliation against a staff member

25 Retaliation against a staff member because he or she has reported misconduct on the part of one or more Union officials or cooperated with a duly authorized audit or investigation of the Union constitutes misconduct which, if established, will lead to disciplinary action and/or administrative measures.

IX. Prohibition of retaliation against outside parties

26 Any retaliatory measures against a contractor or its employees, agents or representatives or any other individual engaged in any dealings with the Union because such person has reported misconduct by Union staff members will be considered misconduct which, if established, will lead to disciplinary or other appropriate action.

X. Entry into force

27 This administrative instruction comes into force with immediate effect.

| Bishar A. Hussein
Director General