



To the University Council
Burgemeester Oudlaan 50
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Room A2-07f

Date

19 January 2021

Subject

Reaction to advice University Council on
Whistleblowers policy 10-12-2020

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Enclosure

Department

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Dear members of the University Council,

On 10 December 2020 we received your positive advice on the proposed new Whistleblower policy.

We would like to thank you for the discussion and the positive result of our collaboration in this process.

Thanks to your substantial contribution, we have realized new regulations in which the protection of whistleblowers takes a prominent place.

Along with your advice, several additional points and suggestions concerning the regulations were brought forward.

Below those additional points and suggestions will be addressed.

(1) General spirit of the regulation

We want to thank the UC once more for their input during the process of drafting the new Whistleblowers regulations. We agree with the UC that the new policy is a step forward in handling of reports of wrongdoing and protecting the Whistleblower.

The UC represents and guards the interests of employees and students in the process of decision-making by the Executive Board. The input from the UC has been helpful for taking this perspective into account. However, it is important to emphasize that the main aim of the Whistleblower regulations (and the law) is serving the public interest by identifying and remedying wrongdoing. Offering protection to a Whistleblower is a way to facilitate this aim. In order to achieve the main aim of the regulations, multiple interests need to be taken into consideration (including the interest of the EUR, society and the accused, who might be an employee). The spirit was not primarily aimed at protecting the status quo of EUR rather than providing

the maximum protection but creating a scheme that is capable of serving all the interests involved in an investigation to a *suspicion* of wrongdoing in a large variety of cases.

A Report of a suspicion of wrongdoing should not result in negative consequences for parties involved until after the Committee reached the conclusion that wrongdoing actually took place and the “accused” were indeed involved.

(2) Protection of the whistleblower

Article 3.6 sub 2 states:

The Committee will not advice on any measures to be taken by the Executive Board.

The UC advised to add to the regulations that it is the duty of the Employer to take disciplinary measures. Therefore, the UC advises to replace the word ‘any’ by ‘disciplinary’ in article 3.6 sub 2.

We do not see merit in this advice. It is not considered desirable that the Committee advises the Executive Board on disciplinary or non-disciplinary measures.

The task of the Committee is to issue a recommendation to the Executive Board regarding the validity or invalidity of the Report (article 3.6 sub 1).

The information required to perform this task, differs from the information needed to decide on appropriate, feasible and fair measure(s) in a particular case.

Other aspects, such as personal circumstances, authorities, periods of limitations, legal relationship with the accused, need to be taken into consideration. Therefore, specific (legal) knowledge may be required. For those specific matters the Executive Board can consider additional advice of a (legal) specialist.

(3) Communication and transparency

Article 4.12 sub 2 states:

Within four weeks of receiving the recommendations from the Committee, the Executive Board will record its decision and send a Notification of this to the Parties concerned, together with a copy of the Committee’s recommendations.

The UC advised to add the clause ‘and to the EUR-community’ (students and staff) to article 4.12 sub 2.

This suggestion will not be implemented. We acknowledge the importance of transparency. However, imposing the obligation to share the decision of the

Executive Board and the recommendations of the Committee with the EUR-community in all cases, might result in violation of the privacy of those involved, even in cases disclosure does not contribute to remedying the wrongdoing and/or serve the public interest. Disclosure may result in inappropriate negative consequences, including for the Whistleblower. We want to prevent 'naming and shaming' practices without a legitimate reason.

Therefore, the Executive Board should have the freedom to make the best possible balance between transparency that benefits the community and public interest and protecting the privacy of the parties involved and choose not to disclose the advice and recommendations to the EUR-community in a particular case.

(4) Harmonization

The harmonization of the Whistleblowers Regulations of the EUR and the one from EUR Holding is considered as an important recommendation which will be acted on in the future in consultation with EUR Holding.

(5) Visibility and accessibility

Both visibility as accessibility are important conditions to encourage the use of the regulations when needed. Therefore, the regulations will be published on both the internal and external website of the EUR. Furthermore, Legal Affairs will, in consultation with other departments such as HR, explore how we can bring the new regulations to the attention of stakeholders more actively.

(6) Ensuring compliance and currency

Updating and adjusting current regulations to new legislation is considered as an important aspect of compliance. We consider your critical comment on the timeline as an accurate and valid observation.

We strive to update the Whistleblowers Regulations and comparable regulations more frequently when this is – due to new developments and/or legislation – deemed necessary or appropriate.

In this regard, we consider suggestions and ideas from the University Council, as valuable. The Council has on many occasions demonstrated its added value.

Considering the findings as explained above, the Whistleblowers Regulations of 4 December were adopted unchanged by the Executive Board.

We are looking forward to more fruitful collaboration with the University Council.

With kind regards,

On behalf of the Executive Board,



Prof. dr. H. Brinksma

Chair of the Executive Board