

FAQ- Whistleblowing

What is Whistleblowing?

Whistleblowing is the reporting of acts and omissions that are prohibited by law and of which the reporting person becomes aware in the course of his/her employment (e.g. criminal offences, corruption, ...).

Who can make a report (reporting person)?

Reporting person means a natural person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities f. e.g.:

- Eurac Research staff: employees regardless of the contract, contractors working for Eurac Research, former employees and employees whose employment relationship has not yet started or who are still in pre-contractual negotiations, paid/unpaid trainees;
- Members of administrative bodies (including non-executive members) and persons in management positions;
- Volunteers;
- Personnel of suppliers, contractors, subcontractors or other service providers.

Who receives the report?

The report is received by the person responsible for transparency and prevention of corruption (hereinafter RPCT). In the event of a conflict of interest or if the report concerns the person responsible for transparency and prevention of corruption himself, the President of Eurac Research receives the report.

If the report is made to a person other than the RPCT (or his deputy in the cases provided for), the latter has to forward the report to the RPCT within seven days and inform the reporting person about the forwarding.

What kind of breaches can be reported?

The report may contain any unlawful acts and omissions of which the whistleblower has become aware in the course of his/her employment, provided that they concern the staff of Eurac Research and/or its sphere of activity and fall within the areas identified by Directive (EU) 2019/1937 and in D.lgs. n. 24 del 10 marzo 2023, such as:

- Violations of an accounting, administrative, civil or criminal nature;
- unlawful acts as defined in d.lgs. n. 231 del 8 giugno 2001;
- Infringements falling within the scope of EU and national legal acts relating to specific sectors (including public procurement, services, products and financial markets, prevention of money laundering and financing of terrorism, product and transport safety, environmental protection, radiation and nuclear safety, food and feed safety, animal health and safety, public health, consumer protection, data protection, network and information system security)

- Matters having a pecuniary impact or infringements detrimental to the financial interests of the European Union;
- Acts or omissions prejudicial to the internal market, including infringements of EU competition rules and state aid (e.g. De Minimis);
- Acts contrary to the object or purpose of the provisions of EU legal acts.

It is also possible to report corruption and maladministration, abuse of power, unlawful commissions and appointments, unlawful procurement procedures, conflicts of interest and non-implementation of anti-corruption rules.

The report must be made in the public interest and has to necessarily be aimed at ensuring the integrity of Eurac Research and not at fulfilling personal claims of the whistleblower.

Which reporting channels do exist?

Internal reporting channels in Eurac Research

In order to facilitate reporting of breaches within Eurac Research and to ensure the protection of whistleblowers, a special internal telematic reporting channel is established. The internal channel can be accessed via the Eurac Research website – Amministrazione Transparente- Whistleblowing. The entire reporting procedure, including the information/documents provided there, will be automatically encrypted via the whistleblowing platform. The following phases are foreseen:

- the whistleblower creates the report by filling out a corresponding questionnaire on the platform;
- as soon as the report has been submitted, the platform generates an identification code to be used for further access, e.g. to check the status of the report, to communicate with the RPCT, or to submit any additional documents;
- the report and any attached documents will be automatically encrypted and sent to the person responsible for transparency and corruption prevention.

For those who prefer a personal meeting with the person in charge of whistleblowing, they can request a meeting through the reporting channel. The person in charge shall record the conversation in written, provided that the reporting person gives his/her consent. The whistleblower can check and correct the record and confirm it by countersigning the meeting minutes.

Within three months of receiving the report, the person responsible for whistleblowing shall report back to the whistleblower.

External channels

Reporting through internal channels is preferable unless whistleblowers have reasonable cause to believe:

- That the report would not be effectively followed up through internal channels; or

- that the report itself could result in a risk of retaliation; or
- that the violation poses an immediate or obvious risk (including to the public interest).

In this case, whistleblowers may report the report to ANAC (Autorità nazionale anticorruzione).

Public disclosure

Whistleblowers may also make the information on breaches publicly available if:

- an internal and/or external report has previously been made and not effectively followed up;
or
- the breach poses an immediate or obvious threat also to the public interest; or
- cannot be effectively followed up, for example, in cases where evidence may be concealed, disguised or destroyed, or where there is a reasonable fear that the recipient is in conspiracy with the author of the violation or is involved in the violation.

What protective measures will be taken?

The whistleblower who discloses his/her identity or whose identity has been established at a later stage and against whom none of the grounds for exclusion referred to in Art. 7 D. lgs. N. 24 10 marzo 2023 exist, shall be granted the following protection measures:

- Duty of confidentiality for the identity of the whistleblower;
- Protection against retaliations;
- prohibition of discrimination against whistleblowers;
- the report is considered a legitimate reason for the breach of confidentiality (Art. 3 of Law No. 179/2017);
- Impunity in relation to possible violation of confidentiality, author rights and data protection (Art. 20 D.lgs. n. 24 del 10 marzo 2023).

The reasons that prompted the whistleblower to make a report are irrelevant for the purposes of his/her protection.

Whistleblowers who become aware of unauthorized acts in the course of their employment and subsequently report or have reported them shall not suffer any of the following reprisals:

- Dismissal, suspension or equivalent action;
- Demotion or non-promotion;
- Change of job, change of work location, reduction in pay, change in work schedule;
- Suspension from continuing education or restriction of access to continuing education;

- Negative performance appraisal or issuance of a poor job reference;
- Imposing disciplinary action or other sanctions, including financial sanctions;
- Coercion, intimidation, harassment/bullying or exclusion;
- Discrimination or other adverse treatment;
- Failure to convert a fixed-term employment contract to a permanent employment contract when the employee reasonably expected such conversion;
- Non-renewal or premature termination of a fixed-term employment contract; or a fixed-term employment contract;
- Harm, including damage to reputation, especially on social media, or economic or financial loss;
- Inclusion of the whistleblower in improper lists based on a formal or informal sector or industry agreement, which may result in the whistleblower no longer being employed in the sector or industry in question;
- the premature termination or cancellation of a contract for goods and services;
- the revocation of a license or permits;
- the request to undergo a psychiatric or medical examination.

Acts that fall into any of the preceding categories are void.

Whistleblowers who have experienced retaliation may report this fact either directly or through ANAC. ANAC will in turn inform the Labor Inspectorate (Ispettorato Nazionale del Lavoro) so that they can take action that falls within their jurisdiction.

Eurac Research shall have the burden of proving that the actions taken against the whistleblower and perceived by the whistleblower as discriminatory or retaliatory were taken for reasons unrelated to the filing of the report. The measures taken by Eurac Research of a discriminatory or retaliatory nature shall be null and void.

Whistleblowers who have been dismissed due to the filing of their report shall be reinstated in their jobs in accordance with article 18 of the Workers' Statute (Legge n. 300 del 20 maggio 1970) or article 2 D.lgs. n. 23 del 4 marzo 2015.

For what type of reports do the above- mentioned protections measures not apply?

The protection measures do not apply to:

- Objections, complaints or requests that are exclusively attributable to the personal interests of the person making the report;

- Reports concerning breaches that are already mandatorily regulated by EU or national legal acts;
- Reports of breaches of national security, procurement related to defense or national security aspects, unless these aspects are covered by relevant EU secondary legislation.

To whom do the protective measures apply?

The measures for the protection of reporting persons shall apply to:

- the reporting persons;
- the facilitators;
- Persons who work in the same work environment as the whistleblowers and are related to the latter by partnership or is related up to the fourth degree;
- colleagues who work for the same Employer as the whistleblower and with whom the whistleblower usually and continuously works;
- legal entities that the reporting persons own (wholly owned or majority-owned) or and work for for;
- legal entities for which the whistleblowers work (e.g., suppliers) and legal entities that operate in the same employment environment as the whistleblowers.

Prohibition of retaliation. What actions are covered by retaliation?

Whistleblowers who become aware of unauthorized conduct in the course of their employment and subsequently report or have reported such conduct may not suffer any of the following retaliation:

- Lay-off, Dismissal, suspension or equivalent measures;
- Demotion or withholding of promotion;
- transfer of duties, change of location of place of work, reduction in wages, change in working hours;
- withholding of training or restriction of access to continuing training;
- Negative performance assessment or employment reference;
- Imposition of disciplinary measure, reprimand or other penalty, including a financial penalty;
- Coercion, intimidation, harassment or ostracism;
- Discrimination, disadvantageous or unfair treatment;
- Failure to convert a fixed-term employment contract to a permanent employment contract when the employee reasonably expected such conversion;

- Non-renewal or early termination of a fixed-term employment contract;
- Harm, including damage to the person's reputation, especially in social media, including economic or financial loss;
- blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- early termination or cancellation of a contract for goods and services;
- the revocation of a license or permits;
- psychiatric or medical referrals.

Retention period for reports and their documentation.

The report and its documentation will be retained for as long as is necessary to handle the report. The report and the stored documents can be retrieved from the notification platform for a maximum of twelve months.

In any case, the notification and the associated documentation may not be kept for longer than five years from the notification of the completion of the procedure.

Personal data that is not useful for processing the notification or, if collected by mistake, will be deleted immediately.

Are anonymous reports processed? Is it possible to make a report anonymously?

The internal reporting channel allows whistleblowers to submit reports anonymously and to communicate anonymously with the person responsible for whistleblowing. However, the protective measures only take effect if the whistleblower can be identified during the whistleblowing procedure.

Does the recipient of the report see who made the report?

No, the recipient of the report receives the report in encrypted form. However, the whistleblower has the option of providing personal details within the telematic report.

Can the identity of the reporting person be disclosed?

The identity of the reporting person shall not be disclosed. In the context of criminal proceedings, the identity of the whistleblower is kept secret in accordance with the modalities and limitations of Art. 329 Code of Criminal Procedure. In the context of proceedings before the Court of Auditors, the identity of whistleblowers shall not be disclosed until the investigation phase is completed. In the context of disciplinary proceedings, the identity of the reporting person shall not be disclosed, provided that the withholding of the disciplinary action charged is based on separate and further findings in relation to the report. If the allegation is based in whole or in part on the report and the disclosure of the identity is indispensable for the defense of the accused, the report may be used in the disciplinary proceedings only if the reporting person consents to the disclosure of his/her identity.

The report is exempt from the right of access provided for by Art. 22 et seq. legge n. 190 del 7 agosto 1990.

The report is also deprived of the general citizen access provided by Art. 5, par 2, D.lgs. n.33/2013.

The RPCT can disclose the identity of the reporting person only in case of a special request by the judicial authority.