Whistleblowing system

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1. Introduction

This system is part of the company's ethical approach, which aims to establish and perpetuate a culture of transparency and integrity.

It is also part of the company's nuclear safety policy, which aims in particular to develop a culture of trust and transparency internally and in the supply chain with regard to the risk of fraud and the detection of counterfeit, fraudulent and suspect items (CFSI).

The purpose of this document is to set out the legal framework of the whistleblowing system and explain its principles and methods of functioning.

2. Legal framework for deployment of the whistleblowing system

Law No. 2016-1691 of 9 December 2016[1] on transparency, combating corruption and the modernisation of the economy, known as the Sapin II Law, was amended by Law No. 2022-401 of 21 March 2022 aimed at improving the protection of whistleblowers, resulting in Decree No. 2022-1284 of 3 October 2022 on the procedures for collecting and handling whistleblower reports.

The amended Sapin II Law includes two additional provisions requiring the introduction of whistleblowing systems:

- Article 8, I. B: "*The following are required to establish an internal procedure for collecting and handling whistleblowers' reports, after consulting the social dialogue bodies and under the conditions laid down by decree in the Council of State:*
  1. Legal persons governed by public law that employ at least fifty officials, except for towns with less than 10,000 inhabitants, public institutions attached to them and public institutions for inter-communal cooperation whose members do not include any town exceeding that population threshold;
  2. State authorities;
  3. Legal persons governed by private law and companies run in their own name by one or more natural persons, with at least fifty employees;
  4. Any other entity falling within the scope of the European Union acts mentioned in Part I B and Part II of the Annex to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law."

- Article 17, II: *"The persons mentioned in I[2] shall deploy... an internal whistleblowing system intended to enable the collection of reports from employees relating to the existence of conduct or situations contrary to the company's code of conduct".*

In accordance with the recommendations of the French Anti-Corruption Agency (AFA)[3], it is possible to introduce a single technical system for collecting reports that is common to both provisions.

Moreover, deployment of the whistleblowing system is also governed by:

[1] https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033558528
[2] Article 17, I: *"the chairmen, managing directors and managers of a company with at least five hundred employees, or belonging to a group of companies whose parent company has its registered office in France and has at least five hundred employees, and whose turnover or consolidated turnover exceeds €100 million"*
[3] https://www.economie.gouv.fr/files/files/directions_services/afa/2017_-_Recommandations_AFA.pdf

- The General Data Protection Regulation (GDPR) of the European Parliament and of the Council of 14 April 2016;
- Law No. 78-17 of 6 January 1978 on Data Processing, Data Files and Individual Liberties (amended in accordance with the provisions of the GDPR);
- The Recommendations of the French Anti-Corruption Agency (AFA)[4].

3. Definition of a whistleblower

Article 6 of the amended Sapin II Law defines whistleblowers:

> *"A whistleblower is a natural person who reports or discloses, without direct financial consideration and in good faith, information relating to a crime, an offence, a threat or prejudice to the public interest, a violation or attempt to conceal a violation of an international undertaking duly ratified or approved by France, a unilateral act of an international organisation taken on the basis of such an undertaking, European Union law, the law or the regulations. If the information was not obtained in the course of the professional activities referred to in I of Article 8, the whistleblower must have had personal knowledge of it."*

Whistleblowers must therefore be:

- A natural person - they cannot be a legal person, i.e. a company, an association or even a trade union;
- Without direct financial consideration
- Acting in good faith - whistleblowers must not act maliciously or out of vengeance by spreading information they know to be false or incorrect;
- If the information was not obtained in the course of professional activities, the whistleblower must have had personal knowledge of it, i.e. have personally witnessed (or been the victim of) the acts - the whistleblower cannot simply spread a rumour.

It is subject to these conditions that whistleblowers will benefit from the full protection guaranteed by the law (see the article "Protection of whistleblowers" below). Failing that, in particular in the event of bad faith or (knowingly) spreading rumours or defamatory facts, they may incur penalties.

The following persons are legally entitled to file a whistleblowing report:

- Members of staff,
- Persons whose employment relationship has ended, if the information was obtained in the course of that relationship,
- Persons who have applied for a job within the entity concerned, if the information was obtained in the course of that application;
- Shareholders, associates and holders of voting rights at the General Meeting of the entity;
- Members of the administrative, management or supervisory body;
- External and casual employees;
- Co-contractors of the entity concerned, their subcontractors or, if they are legal entities, members of the administrative, management or supervisory body of these co-contractors and subcontractors,
- As well as the members of staff of co-contractors and subcontractors.

[4] See above

4. Who should whistleblowing reports be sent to?

Whistleblowers have three different channels to make their report, while benefiting from the protections provided for them by law:

- Internal whistleblowing report: the whistleblower chooses to lodge the whistleblowing report internally via the platform https://www.ethicorp.com/calogena

To offer the strongest guarantees of impartiality and independence, CALOGENA has chosen as its representative ethicorp.com, accessible at https://www.ethicorp.com/calogena
This platform for receiving and handling whistleblowing reports is managed and run entirely by lawyers, independent regulated professionals, subject to strict ethical and disciplinary obligations, in particular regarding confidentiality and professional secrecy.
Due to its positioning, Ethicorp.com therefore has the competence, authority and sufficient resources to carry out its missions.

- External whistleblowing report: whistleblowers can send their report to a competent authority (listed by decree), to the Defender of Rights, to the judicial authorities or to any competent institution, body or organisation of the European Union, either after an internal report or directly, if they consider that it is not possible to remedy the violation effectively by an internal report, or to avoid a risk of reprisals

- Public disclosure Finally, whistleblowers can make a public whistleblowing report, either in the event of imminent or obvious danger for the general interest, for whistleblowers who have obtained the information in the course of their professional activities, or, if the external report was not followed by any appropriate measures within the time limits set by law, in the event of serious and imminent danger or if referring the matter to the competent authority would put the whistleblower at risk of reprisals or would not make it possible to remedy the situation effectively.

5. What should be declared? Facts that may be the subject of a whistleblowing report

In accordance with the law, whistleblowing reports may concern:

- A crime or offence,
- A threat or damage to the general interest
- A violation or an attempt to conceal a violation
  - Of an international undertaking duly ratified or approved by France;
  - Or of a unilateral act of an international organisation taken on the basis of such an undertaking;
  - Or European Union law, the law or the regulations.
- A breach of the company's Anti-Corruption Code of Conduct.

Whistleblowing reports may concern facts that have occurred or are very likely to occur.

Furthermore, insofar as counterfeit, fraudulent and suspect items (CFSI) may represent a threat to the general interest in connection with nuclear safety, the system can be used to report fraud or a CSFI risk.

Other examples:

- Money laundering
- Unfair competition
- Corruption
- Embezzlement
- Discrimination
- Swindling
- Whale/supplier phishing
- Tax evasion

- Workplace harassment
- Sexual harassment
- Computer intrusion
- Radicalisation and terrorism
- Industrial risk
- Employee safety and accidents at work
- Breach of confidentiality - secrecy
- Violence - assault
- Theft

By way of exception, whistleblowing reports cannot relate to matters covered by national defence secrecy, medical confidentiality, lawyer-client confidentiality or the secrecy of judicial investigations, inquiries or proceedings.

If in doubt, it is better to use the internal reporting system rather than take the risk of a serious act being misjudged and not revealed. The lawyers acting via ethicorp have the necessary skills to examine the whistleblowing report and assess its appropriateness.

6. Confidentiality

In accordance with Article 9 of the Law of 9 December 2016, *"The procedures implemented to collect and handle whistleblowing reports, under the conditions mentioned in Article 8, guarantee strict confidentiality of the identity of the authors of the whistleblowing report, the persons targeted by it and any third parties mentioned in the report, and of the information collected by all of the recipients of the report."*

The following must therefore remain strictly confidential:

- The identity of the whistleblower, who must therefore be able to submit the whistleblowing report with total peace of mind;
- The identity of the person targeted by the whistleblowing report and of any third parties mentioned (e.g. witnesses) in the report;
- The information collected in connection with the whistleblowing report, i.e. the facts that are the subject of the whistleblowing report.

In practice, these last two elements (identity of the person targeted and of any third party mentioned in the report, and information collected in connection with the whistleblowing report) will only be transmitted to the persons responsible for investigating the facts.

Important - Any breach of the confidentiality of the whistleblowing report is punishable by two years' imprisonment, and a fine of €30,000 (€150,000 for legal entities)[5].

Whistleblowing reports can be submitted anonymously via the Ethicorp platform.

In any case, if the whistleblower decides to provide their identity, only ethicorp.com will be informed of it; their identity will not be transmitted or revealed to the employer.

Ethicorp will only transmit, under the strict conditions of the law stated above, the facts that are the subject of the whistleblowing report and the identity of the person targeted, in order to enable the

[5] Article 9, II of the law of 9 December 2016

internal investigation of the facts. In addition, the company has made a contractual commitment to ethicorp not to request or attempt to discover the identity of whistleblowers.

7. Protection and duties of whistleblowers

Whistleblowers are protected against all retaliatory measures if they comply with the conditions laid down by law, in accordance with Articles 10-1 and 12 to 13-1 of the amended Sapin II Law.

Art. L. 1121-2 of the French Labour Code:

> *"No person may be excluded from a recruitment procedure or from access to a placement or a period of vocational training, no employees may be punished, dismissed or subjected to a direct or indirect discriminatory measure, in particular as regards salary, within the meaning of Article L. 3221-3, profit-sharing measures or the distribution of shares, training, redeployment, appointment, qualification, classification, career advancement, working hours, assessment of performance, transfer or renewal of contract, or any other measure mentioned in Article 10-1 II of Law No. 2016-1691 of 9 December 2016 on transparency, combating corruption and the modernisation of the economy, for having reported or disclosed information under the conditions specified in Articles 6 and 8 of the aforesaid Law."*

Article L. 1132-3-3 of the French Labour Code:

> *"No person who has testified, in good faith, to facts constituting an offence or a crime that they have had knowledge of in the performance of their duties, or who has reported such facts, may be subjected to the measures mentioned in Article L. 1121-2.*
>
> *The persons mentioned in the first paragraph of this article benefit from the protections provided for in Article 10-1 I and III and in Articles 12 to 13-1 of Law No. 2016-1691 of 9 December 2016 on transparency, combating corruption and the modernisation of the economy."*

Art. L. 1152-2 of the French Labour Code

> *"No person who has suffered or refused to suffer repeated acts of psychological harassment or who has, in good faith, reported or testified to such acts may be subjected to the measures mentioned in Article L. 1121-2.*

Moreover, retaliatory measures against a whistleblower constitute a tort of discrimination pursuant to Article 225-1 of the French Criminal Code.

Whistleblowers also benefit from exemption from criminal and civil liability in certain cases and under certain conditions.

Pursuant to Article 122-9 of the French Criminal Code:

> *"A person who infringes a secret protected by law is not criminally responsible, if the disclosure is necessary and proportionate to safeguarding the interests concerned, if it is made in compliance with the conditions for reporting defined by the law, and if the person meets the criteria for defining a whistleblower set out in Article 6 of Law No. 2016-1691 of 9 December 2016 on transparency, combating corruption and the modernisation of the economy.*
>
> *Whistleblowers who remove, misappropriate or conceal documents or any other medium containing the information that they obtained knowledge of lawfully and that they report or*

disclose under the conditions mentioned in the first paragraph of this article, are also not criminally responsible.

This article also applies to accomplices to these offences."

In addition, since the entry into force of Law No. 2022-401 of 21 March 2022 aimed at improving the protection of whistleblowers[6], Article 10-1 of the Sapin II Law specifies the exemption from civil liability of whistleblowers who have chosen to make a public disclosure, under certain conditions:

"Persons who have reported or publicly disclosed information under the conditions set out in Articles 6 and 8 do not have civil liability for the damage caused by their report or public disclosure if they had reasonable grounds to believe, when they made it, that the report or public disclosure of all the information was necessary to safeguard the interests concerned."

Article 6-1 of the Sapin II Law specifies that whistleblower status and the resulting protection also apply to[7]:

- Facilitators, i.e. any natural person or any non-profit-making private legal entity (e.g. an association or a trade union) who help a whistleblower to make a report or disclosure in accordance with the provisions of the Sapin II Law;
- Individuals linked to the whistleblower and who are themselves at risk of retaliatory measures;
- Legal entities controlled (within the meaning of Article L.233-3 of the French Commercial Code) by the whistleblower with which he or she works or has professional links.

This protection only applies if the whistleblower complies with the framework set out in Articles 6 to 8 of Law No. 2016-1691 of 9 December 2016.

Protection of whistleblowers also entails duties. Whistleblowers will not be protected if they do not meet the legal definitions, and in particular if they report facts in bad faith and/or of which they had no personal knowledge if the information was not obtained in the course of their professional activity. They may then incur civil and criminal penalties, in particular for defamation or false accusations.

8. Rights of the person targeted by the whistleblowing report

Persons targeted by the whistleblowing report are entitled to strict confidentiality, in particular with regard to the fundamental principle of the presumption of innocence and their right of defence.

Information likely to identify them cannot be disclosed, except to judicial authorities, until it has been established that the whistleblowing report is legitimate. In other words, the company will conduct an internal investigation, it being stated that "*personal data must only be made accessible to persons authorised to receive them in view of their remit*" (Decision of the CNIL of 18 July 2019), and/or will refer the matter to the judicial authorities.

[6] Law No. 2022-401 of 21 March 2022 aimed at improving the protection of whistleblowers (1) - Légifrance (legifrance.gouv.fr)

[7] Article 2 of the Law of 21 March 2022

The persons concerned by a whistleblowing report (as witness, victim or alleged perpetrator of the acts) must, in accordance with Article 14 of the GDPR, be informed by a whistleblowing report within a reasonable time limit, which cannot exceed **one month**, following the issue of a whistleblowing report.

Nevertheless, pursuant to Article 14-5-b of the GDPR, informing of persons concerned may be deferred if it is likely to "*seriously impair the achievement of the objectives of that processing*". This may be the case for instance if disclosure of this information to the person targeted would seriously compromise the needs of the investigation, for example if there is a risk of destruction of evidence. The information must nevertheless be provided as soon as there is no further risk, and must not include any information regarding the identity of the issuer of the whistleblowing report or of third parties.

However, if disciplinary action or legal proceedings are instigated against the person targeted following the whistleblowing report, that person may obtain this information in accordance with the rules of ordinary law (in particular the rights of defence).

However, this is dependent on appropriate measures being taken to protect the rights and freedoms and the legitimate interests of the data subject.

9. Filing, handling and monitoring internal whistleblowing reports - guidelines

- Access to the platform

The ethicorp platform is accessible online at the secure address https://www.ethicorp.com/calogena. Except during maintenance, it is accessible 24/7, 365 days a year.

- How to create a whistleblower account

Before they can submit their whistleblowing report, whistleblowers will be asked to create a whistleblower user account.

- How to submit a whistleblowing report

Whistleblowers can submit their whistleblowing report with complete confidentiality via their account on the ethicorp platform.

They will be asked to describe, in a free text field, the facts and information they have personally witnessed.

They may attach documents likely to support their whistleblowing report, if they have any.

Finally, to submit the whistleblowing report they must confirm that they have read a detailed notice informing them of their rights and duties and the legal framework for whistleblowing reports.

The whistleblower will immediately receive an acknowledgement of receipt of the whistleblowing report. At the same time, ethicorp's lawyers will be informed of submission of the whistleblowing report and asked to view it on the platform.

The whistleblower will be informed on their whistleblower account of the fundamental stages of follow-up of the whistleblowing report: start of an investigation, proceedings, and possibly its closure, e.g. if the facts are not clear. This information will not, of course, give them access to any confidential

information obtained in the course of the investigation or proceedings that follow the whistleblowing report.

Whistleblowers can at any time see the status of their whistleblowing report, clarify or supplement it, or even submit another whistleblowing report, by logging into their whistleblower account using the email address and password they entered when they created their account.

ethicorp's lawyers may need to contact the whistleblower to ask them to clarify their whistleblowing report, provide additional information, or to inform them of the follow-up. The whistleblower will then receive an email that does not contain any confidential data, asking them to log in to their account to read the message sent to them.

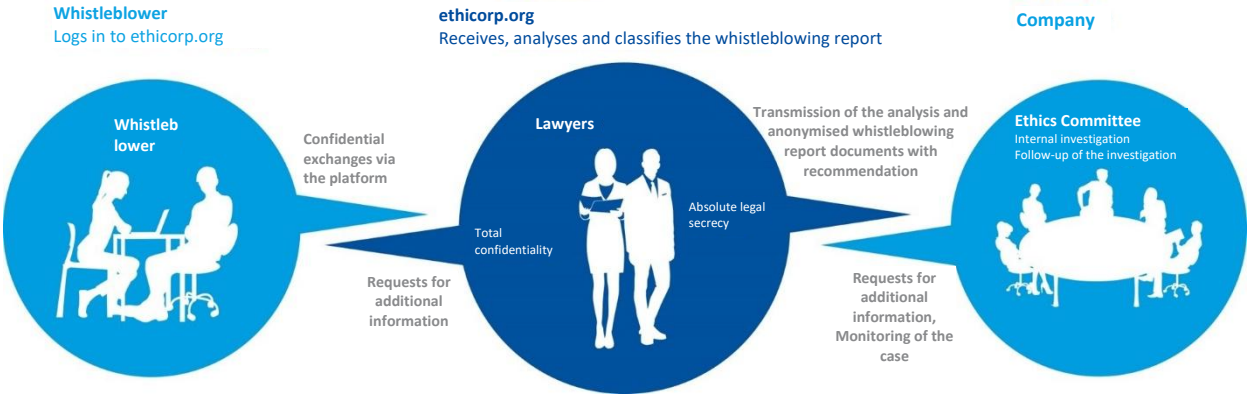
Details of how the platform works, with a description of each stage, are provided in the directions for use that the employer makes available to employees and external and casual employees.

- Action taken as a result of the whistleblowing report

Ethicorp conducts an initial analysis of the whistleblowing report to ensure that it complies with legal provisions, in particular with regard to the seriousness of the facts that may be reported.

If the whistleblowing report complies with the legal provisions, it is transmitted (without indicating the whistleblower's identity) to the company's Ethics Committee, which will decide on the follow-up measures: internal investigation, legal proceedings, etc.

If the Ethics Committee or investigators require additional information, ethicorp will liaise with the whistleblower to ensure strict confidentiality.



10. Processing of personal data

On 6 July 2023, the French Data Protection Authority (CNIL) adopted new Guidelines for processing personal data intended for implementing a whistleblowing system.

We recommend that you refer to it for a description of all the rights applicable in this regard.

- Data retention periods

Storage of personal data is subject to the provisions of the Law of 6 January 1978 and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (known as the General Data Protection Regulation - GDPR), in force since 25 May 2018. In particular, personal data may only be retained for the time strictly required to fulfil the purpose for which they were collected.

Article 9-III of the Sapin II Law stipulates, since the entry into force of the Law of 21 March 2022, that:

> *"Whistleblowing reports may only be retained for the time strictly necessary and proportionate to their processing and the protection of the authors, the persons targeted and the third parties they mention, taking into account the time required for any further investigations. However, data relating to the reports may be retained after that period, provided that the individuals concerned are neither identified nor identifiable.*
>
> *If they are processed, the personal data relating to reports are retained in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).”*

In accordance with point 7.1 of the guidelines established by the CNIL:

> *“64. With regard to the purposes that may justify the introduction of a whistleblowing system, and except as otherwise provided by law or the regulations:*
>
> - *Data relating to whistleblowing reports may be retained in the active database until a final decision is made on the action to be taken. This decision must be made within a reasonable time limit from receipt of the report.*
> - *Once the final decision has been taken on the action to be taken regarding the whistleblowing report, the data may be retained in the form of intermediate archives "for the time strictly necessary and proportionate to their processing and the protection of the authors, the persons targeted and the third parties they mention, taking into account the time required for any further investigations".*
> - *- When disciplinary or legal proceedings are instigated against a person implicated or the author of an abusive whistleblowing report, the data relating to the whistleblowing report may be kept by the organisation responsible for managing whistleblowing reports until the end of the proceedings or the limitation period for appeals against the ruling pronounced.*
>
> *65. The data may be kept for a longer period, in intermediate archives, if the data controller is legally obliged to do so (for example, to meet accounting, social security or tax obligations), or for purposes of proof in the event of an audit or a possible dispute, or in order to carry out quality audits of the processes for handling reports.”*

Point 7.2 specifies that:

> *“66. The regulations on the protection of personal data (GDPR, amended French Data Protection Act etc.) do not apply, in particular as regards the retention periods, to anonymised data, i.e. data that can no longer be linked to one or more identified or identifiable natural persons (for further details, cf. Opinion No. 05/2014 on anonymisation techniques of Group 29 (now the European Data Protection Board or "EDPB").*
>
> *67. Similarly, the amended Sapin 2 Law now specifies for internal whistleblowing reports that "data relating to the reports may however be retained for longer than [the period required for their processing and for the protection of stakeholders] provided that the natural persons concerned are neither identified nor identifiable".*
>
> *68. For the purposes of these guidelines, the expressions "data [in which] the natural persons concerned [are] neither identified nor identifiable" (within the meaning of the amended Sapin 2 law) and "anonymised data" (within the meaning of the aforementioned opinion No. 95/2004 of G29) are deemed to be equivalent.”*

- Respect for the rights of individuals

Data subjects have the following rights, which they exercise under the conditions set out in the GDPR:

- Right to object to the processing of their data, subject to the conditions for exercising this right in accordance with the provisions of Article 21 of the GDPR;
- Right of access, rectification and erasure of their personal data;
- Right to restriction of processing. For example, if the person disputes the accuracy of their data, they can ask the organisation to temporarily stop processing their data while it makes the necessary checks.

Exercising the right of access must not infringe the rights of others.

In accordance with Article 21 of the GDPR, the right to object cannot be exercised for processing required to comply with a legal obligation to which the data controller is subject (in particular concerning processing introduced by companies that meet the conditions of Articles 8 and/or 17 of the Sapin II Law).

Finally, the CNIL states that the right of rectification provided for in Article 16 of the GDPR must be assessed in view of the purpose of the processing.

The right of rectification is limited and cannot be used to retroactively modify the information contained in the whistleblowing report or collected during its investigation. When it is allowed, its exercise must not make it impossible to reconstruct the chronology of any changes to important elements of the investigation.

This right may only be exercised to rectify factual data, the accuracy of which can be verified by the data controller on the basis of evidence, without the data initially collected being erased or replaced, even if they are incorrect.

For all requests, contact SAS ethicorp.com, 7 rue Royale, 75008 Paris, France, contact@ethicorp.com