

Guide

JULY 2017

Orientation and protection of whistleblowers



Introduction

This guide is intended for persons who wish to report facts of which they have personal knowledge.

These facts may come under:

- Either the general regime for whistleblowers provided for in Articles 6 to 15 of **Law no.2016-1691 of 9 December 2016 bearing on transparency, the fight against corruption, and modernisation of economic life** and specified by [Decree no.2017-564 of 19 April 2017 bearing on procedures for collection of reports from whistleblowers within legal entities under public or private law and State administrations](#);
- Or other whistleblowing regimes listed in this guide on sheet 8, whose rules are specific but whose general principles are comparable.

This guide is organised into 9 sheets, the objective of which is to guide you so that your alert can be issued under proper conditions and processed as quickly as possible.

It is essential that the procedure outlined below and described in the different sheets of this guide be followed up to ensure that you are covered by the whistleblower protection regime.

**THUS, YOU MUST FOLLOW
A THREE-STEP PROCEDURE:**

1 **FIRST
LEVEL:**
reporting
to your employing
organisation, the
organisation in question
or the competent
authority;

2 **SECOND
LEVEL:**
if this
organisation does
not respond within a
reasonable timeframe,
you can report to the
authority that you deem
appropriate to remedy
the misconduct;

3 **THIRD
LEVEL:**
if at the second
level, the alert is still not
taken into consideration,
you can make the alert
public.

At all stages of the procedure, the confidentiality of information relating to the fact and persons must be ensured.

The Defender of Rights is not the authority that will process your report – your employer or the organisation within which the disputed practices take place will often be able to put a stop to the wrongdoings giving rise to the alert.

Indeed, the legislator, by Organic [Law no.2016-1690 of 9 December 2016 bearing on the competence of the Defender of Rights for the orientation and protection of whistleblowers](#), entrusted the Defender of Rights with the role of helping to guide all whistleblowers at all stages of their proceedings and to ensure their rights and freedoms.

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Sheet 1 / Are you a whistleblower?

No authority will issue you the status of whistleblower.

It is by disclosing information and strictly respecting the reporting procedure as defined hereinafter that the benefits of the whistleblower protection regime will apply to you.

To be a whistleblower, you must be a natural person who has personal

knowledge of information that you believe should be disclosed or reported.

You must be impartial, i.e. you must not benefit – particularly financially – from the reporting, and you must be in good faith, i.e. you must have reasonable grounds to believe that the reported misconduct is true.



Facts, information or documents, in whatever form or medium, covered by national defence secrecy, medical secrecy or the secrecy of relations between lawyers and their clients may not be the subject of an alert.

You must consider the facts reported to be constitutive of:

- A crime;
- An offence;
- A serious and manifest violation;
 - of the law or regulations;
 - of an international commitment

duly ratified or approved by France;

- of a unilateral act of an international organisation taken on the basis of an international commitment duly ratified or approved by France;
- a serious threat or prejudice to the general interest.



Given the myriad facts that could be the subject of a report, it is not possible to give an exact classification thereof. They include, for example:

• **In the economic field:**

the offences of corruption, influence peddling, bribery, unlawful taking of interest, misappropriation of public funds or favouritism;

• **In the field of health, the environment, food safety:**

actions that could pose a major risk or cause serious harm to the population.

If you meet the definition of whistleblower and if you have followed the appropriate reporting procedure for your case described in the following sheets, it is highly unlikely that you will be held criminally liable.



You should consult sheet 8:

- If you are a natural person with no professional relationship with the organisation in question;
- If you are a legal entity (association, trade union, etc.);
- If your alert is issued in the field of intelligence, insurance or banking, environmental health, aviation safety or in a medico-social institution.

Sheet 2 / A

reporting procedure that ensures confidentiality

When you make a report, the confidentiality of your identity, that of the persons concerned by the alert and the facts reported must be ensured.



At all stages of the reporting procedure and **regardless of the regime you fall under**, you must take all necessary precautions to preserve the confidentiality of your identity and that of the persons concerned as well as the facts giving rise to the alert, **otherwise you could be held criminally liable**.

2.1 When you contact the organisation in question or any public or private authority

If you contact your employing organisation, it is your responsibility to check whether it has a specific reporting procedure in place.

This procedure is mandatory for employers or organisations of a certain size (see sheet 3).

If no procedure is provided for (see sheet 4) or if you are contacting a public or private authority that is not your employer (see sheets 5 and 6), strict confidentiality rules must be respected, such as the double envelope system recommended for making a report to the Defender of Rights in the paragraph below.



You are strongly recommended to send any written correspondence sent by post by way of registered mail with acknowledgement of receipt. This precaution will allow you to establish, if necessary, the starting point of your alert and thus the response time (see in particular sheets 5 and 6).

2.2 When you contact the Defender of Rights

Your alert must be sent by post, in writing and in a double envelope.

All the elements of the report should be placed in a closed envelope – the **"inner envelope"** – which should be placed in a second envelope the **"outer envelope"** – addressed to the Defender of Rights.

The **"inner envelope"** should **ONLY** bear the following words: **"REPORT OF AN ALERT** (date of sending)"

The **outer envelope** should bear the delivery address:



**Défenseur des droits
Libre réponse 71120
75342 PARIS CEDEX 07**

You will be sent an acknowledgement of receipt containing an identification number that will then be used for all exchanges with the Defender of Rights.



To maintain the confidentiality of subsequent correspondence, you should follow the same double envelope procedure for all letters you send to the various organisations concerned and to the Defender of Rights.

Sheet 3 /

Procedure to be followed in large employing organisations

In accordance with the confidentiality rules set out in sheet 2, if you are:

In a working relationship with an employer in one of the following categories:

- Legal entity under private law with at least 50 employees (company, etc.);
- Legal entity under public law with at least 50 agents and employees (government-funded administrative institution, government-funded industrial and commercial institution, etc.);
- Central government;
- Département;
- Region;
- Municipality of more than 10,000 inhabitants;
- Intercommunal co-operation institution with its own tax system for a municipality of more than 10,000 inhabitants

And if you fall into one of the following categories:

- Employee;
- Civil servant;
- Public official;
- External or casual worker (temporary staff, trainee, service provider, employee of subcontracting companies, etc.)

You must follow the procedure described below:

[Decree no.2017-564 of 19 April 2017 requires your employer to set up procedures for collection of reports, by 1 January 2018.](#) This procedure must be sufficiently publicised for you to be aware of it.

It will be different for each organisation but should specify at least:

- To whom to send your report within the employing organisation;
- How to contact them (by post, messaging service, etc.);
- What information you will be required to send them;
- What precautions should be taken to ensure the alert remains confidential;
- The procedures by which you will be responded to (acknowledgement of receipt, response times regarding the admissibility of your alert, information procedures on the conditions for processing the alert, etc.).



- If you work in a very large company with several thousand employees, your employer will have been required to set up an alert and report collection mechanism.
- If you work in a company with at least 500 employees, your employer will have also been required to set up an internal alert system for collecting reports of corruption or influence peddling.



Except in the cases described on sheets 5 and 6, it is prohibited to make public the facts and identity of the persons and organisations subject to the alert. Failure to comply with this rule could result in criminal proceedings, in particular for defamation, and could result in you losing your protective status as a whistleblower (sheet 7).

Sheet 4 / Procedure to be followed in small employing organisations

In accordance with the confidentiality rules set out in sheet 2, if you are:

In a working relationship with:

- A company with fewer than 50 employees;
- A government-funded institution with fewer than 50 agents and employees;
- A municipality of fewer than 10,000 inhabitants;
- An intercommunal co-operation institution with its own tax system for a municipality of fewer than 10,000 inhabitants.

And if you fall into one of the following categories:

- Employee;
- Civil servant;
- Public official;
- External or casual worker (temporary

staff, trainee, service provider, employee of subcontracting companies, etc.).

You must follow the procedure described below:

- A/** Write to the employer or organisation by way of registered mail with acknowledgement of receipt, following the confidentiality rules set out in sheet 2;
- B/** In the same way, follow up in writing by way of registered mail with acknowledgement of receipt if no action has been taken following your first report within a reasonable timeframe to ensure that they do not intend to respond (see sheet 5);
- C/** If the employer still fails to respond, you can send your report



to the authorities that are liable to process it by way of registered mail with acknowledgement of receipt. This may be one or more of the following authorities:

- administrative authority;
- professional order;
- judicial authority (see sheet 5).

The chosen authority has 3 months to provide you with a response. This does not mean that the misconduct reported should cease within the 3-month period, as everything will depend on the complexity of processing the alert.



Except in the cases described on sheets 5 and 6, it is prohibited to make public the facts and identity of the persons and organisations subject to the alert. Failure to comply with this rule could result in criminal proceedings, in particular for defamation, and could result in you losing your protective status as a whistleblower (sheet 7).

Sheet 5 / What to do if your alert is not processed within a reasonable timeframe

Your objective in issuing an alert is of course to put a stop to the wrongdoings you have observed and reported.

In most cases, because it will be in its interest, it is likely that **the organisation in question to which you must report to first** will attend to putting a stop to the wrongdoings giving rise to the report.

If within a reasonable timeframe you have no response regarding the admissibility of your alert, you can alternatively or simultaneously make a report to:

A/ THE COMPETENT ADMINISTRATIVE AUTHORITY

Given that there are a great many competent authorities as they differ according to the subject of your alert, this guide cannot list all the authorities to contact. These may include any authorities that exercise a power of control or supervision over the organisation in question (prefect, rector, inspectorates, etc.).

B/ THE COMPETENT PROFESSIONAL ORDER

Depending on the field of the alert, this may include the order of lawyers, doctors, architects, veterinarians, accountants, pharmacists, notaries, court bailiffs, etc.

C/ THE COMPETENT JUDGE

It will be your responsibility to report to the competent judge for your dispute. As a general rule, this will be the judicial judge for disputes concerning relations between private parties or the administrative judge for disputes involving a public authority.



In the absence of a response, within three months, from the administrative authority, the professional order or the judge on the processing of the alert:

You have the right, but not the obligation, to make your alert public.



The reasonable response time regarding the admissibility of your alert should be specified for the large employing organisations listed in sheet 3. This timeframe will be left to your discretion in the small employing organisations listed in sheet 4 or if you are not in a professional relationship with the organisation in question (see sheet 8).

In all cases, it is preferable to send your postal correspondence by registered mail with acknowledgement of receipt, in accordance with the rules of confidentiality (see sheet 2).

Sheet 6 / Emergencies justifying the absence of reporting to the organisation in question

In the event that you consider the facts giving rise to the alert to constitute:

- A serious and imminent danger (example: intoxication);
- or a risk of irreversible damage (example: pollution).

You may make your report directly to:

- The judicial authority;
- The administrative authority;
- The professional order (see sheet 5).

A report can be made to these bodies alternately or simultaneously. This should ideally be done by way of registered mail with acknowledgement of receipt.

It is also recommended to respect the submission procedures set out on sheet 2 (double envelope system) to ensure compliance with confidentiality rules.

If you consider your report to be particularly serious (example: imminent danger)

You also have the option of making the alert public.



This exceptional measure should only be used with great discretion as you can only be found not criminally liable if your assessment of the urgency of the situation is indisputable.

Public disclosure should therefore only be considered as a last resort if it is evidently impossible to do otherwise to put a stop to the threat giving rise to your alert.



Sheet 7 / How are you protected?

7.1 You should not suffer any consequences related to your report

A/ IN THE CONTEXT OF YOUR WORK YOU SHOULD NOT BE SUBJECTED TO ANY RETALIATION OR REPRISAL

Your employer cannot take any action against you following your alert.

If you find that this is the case, you will benefit from the adaptation of the rules on the burden of proof. All you need to do is provide evidence of alleged reprisals following the alert you issued, and your employing organisation must show that the disputed action was taken for a reason unrelated to the alert.

It is generally sufficient to demonstrate the chronological sequence of events showing that you have been subjected to adverse measures (examples: pay cut, disciplinary action, decreased promotion, dismissal, etc.)

at a time close to when the employer became aware of the alert.

Please note that if you are a contractor, following interim proceedings requesting the suspension of your dismissal, the administrative judge may order the public body to reinstate you possibly in the context of an interim proceedings, i.e. the judge will make a judgement as soon as possible.

**B/ IN ALL AREAS OTHER THAN YOUR WORK,
YOU SHOULD NOT BE SUBJECTED TO ANY RETALIATION,
OR REPRISAL**

The reporting of misconduct cannot lead to any negative consequences related to the alert. Thus, for example, you cannot be refused or deprived of a right (enrolment at a childcare centre or summer camp, withdrawal of a concession, etc.) owing to the report.

Here, too, a short period of time elapsed between the denial or deprivation of a right and the alert will work in favour when demonstrating that retaliatory measures have in fact been taken.

7.2 By following the procedure you will be criminally protected

A/ HOW TO BENEFIT FROM EXEMPTION FROM CRIMINAL LIABILITY

- 1.** Disclosure of the information must be necessary and proportionate to the safeguarding of the interests in question;
- 2.** This is why you must have at least attempted to remedy the misconduct with the competent

authorities by following the multi-step procedure described above in the sheets of this guide;

- 3.** You must be a natural person (see sheet 1).

B/ DISCLOSING YOUR IDENTITY IS PUNISHABLE BY LAW

Information likely to identify you is confidential and must therefore not be disclosed under penalty of two years' imprisonment and a fine of 30,000 euros.

C/ ATTEMPTING TO PREVENT YOU FROM ISSUING AN ALERT IS PUNISHABLE BY LAW

Anyone who tries to prevent you from issuing an alert is liable to a penalty of 1 year's imprisonment and a fine of 15,000 euros.

Sheet 8 / External whistleblower, legal entity or subject to a special regime?

Are you a whistleblower external to the organisation in question, a legal entity or subject to a special regime?

This sheet outlines the specific reporting procedures you should follow if your alert falls into one of the areas listed below. The rules of confidentiality set out in the previous sheets must be respected.

8.1 You are a natural person in a non-professional relationship with the organisation in question

You are a natural person (user, citizen) with no professional relationship with the organisation in which you observe misconduct. Your alert is part of the general regime provided for by [Act no.2016-1691 of 9 December 2016 bearing on transparency, the fight against corruption, and modernisation of economic life.](#)

You should refer to sheets 1, 2, 5, 6, 7 and 8 for the procedure to follow in your case.

8.2 You are a legal entity

The provisions of [Act no.216-1691 of 9 December 2016 bearing on transparency, the fight against corruption, and modernisation of economic life](#), are not applicable to you, as they only apply to natural persons.

However, you may fall under one of the special regimes described below, such as banking and insurance or aviation security. In this case, you are required to follow one of the procedures described below.

8.3 You are subject to a special reporting regime if:

A/ YOU ARE ISSUING AN ALERT IN THE FIELD OF INTELLIGENCE

Due to the high degree of confidentiality attached to information that may be disclosed in the field of intelligence, [the legislator](#) has maintained a specific regime. Hence:

If you work in one of the following departments:

- Directorate-General for External Security (DGSE);
- Directorate for Defence Protection and Security (DPSD);
- Directorate for Military Intelligence (DRM);
- Directorate-General for Internal Security (DGSi);
- National Directorate for Customs Intelligence and Investigations (DNRED);

- Department of Intelligence Processing and Action Against Illegal Financial Circuits (TRACFIN).

And you are aware of facts that are likely to constitute a clear violation of [Book VIII of the Internal Security Code](#) pertaining to intelligence;

You can, in accordance with the confidentiality rules set out in [sheet 2](#), make a report to the [Commission for Monitoring of Intelligence techniques](#), which alone is competent to handle your alert.

This Commission may also refer the matter to the public prosecutor if it considers that the illegality you have reported is likely to constitute an offence. At the same time, the matter is referred to the Consultative Commission on National Defence Secrets so that an opinion can be given to the Prime Minister on the need to declassify all or some of the information with a view to it being supplied to the public prosecutor.



This information is supplied in accordance with national defence secrecy.

B/ YOU ARE ISSUING AN ALERT IN THE FIELD OF BANKING OR INSURANCE

Due to the sensitivity and complexity of the facts that could give rise to your report regarding financial markets and insurance, the legislator has provided for a special regime.

You will therefore be required in this case to report to:

- [The Financial Markets Authority \(AMF\) or the Prudential Supervision and Resolution Authority \(ACPR\)](#) in accordance with the procedures defined by these authorities

This specific procedure concerns alerts pertaining to any failure to

comply with the obligations laid down in European regulations and by the Monetary and Financial Code or the General Regulation of the Financial Markets Authority, which are monitored by one of these authorities.



To find out about the procedure implemented by the Financial Markets Authority, you can consult the "*reporting regulatory violations*" page on the website of the Financial Markets Authority: <http://www.amf-france.org/>.

C/ YOUR ALERT CONCERNS YOUR EMPLOYER'S PRODUCTS OR MANUFACTURING PROCESSES THAT POSE RISKS TO HEALTH AND THE ENVIRONMENT

If you believe in good faith that the products or manufacturing processes used or implemented in the institution

pose a serious risk to public health or the environment:

1. You should notify your employer immediately.

2. Your alert should be recorded in writing in a special register.

3. Your alert should be dated and signed.

4. Your alert should specify:

1. The products or manufacturing processes used or implemented by the institution which you consider in good faith to pose a serious risk to public health or the environment;

2. If applicable, the potential consequences for public health or the environment;

3. Any other information relevant to the assessment of the alert issued.

5. Your employer must inform you of the action taken as a result of the alert.

6. In the event of a disagreement on the validity of the alert, or if no action has been taken within one month, you can report to the prefect of your *département*.

D/ YOUR ALERT CONCERNS MALTREATMENT IN A MEDICO-SOCIAL INSTITUTION OR IN A SOCIAL AND MEDICO-SOCIAL SERVICE OR OF THE ELDERLY OR DISABLED PERSON WHO EMPLOYS YOU

You wish to testify about the maltreatment or deprivation inflicted on a service user or to report such acts taking place in a medico-social institution or in a social and medico-social service or to an elderly person or a disabled adult that employs you.

To check whether your employer falls into this category, you can consult the list of institutions of this type, available online on the website of the [Ministry of Social Affairs](#).

You should refer to sheets 1 to 8 for the procedure to follow in your case.

E/ YOUR ALERT CONCERNS AVIATION SAFETY

If you are a civil aviation operator and are aware of an event that may affect aviation safety (any type of interruption, anomaly, operational failure or other unusual circumstance), you are required to

report it without delay to the Minister responsible for civil aviation or, if applicable, to your employer.

Sheet 9 /

The role of the Defender of Rights

The Defender of Rights guides you in your actions and ensures your rights and freedoms, regardless of the applicable whistleblower regime.

The Defender of Rights is responsible for guiding you and protecting you from any retaliation or reprisal, regardless of the legal whistleblower regime applicable to your situation.

When you report to the Defender of Rights by postal correspondence, you should be as specific as possible so that your request for guidance and/or protection can be responded to as soon as possible.

You should therefore attach to this postal correspondence:

- The exact contact details where you can be reached;
- A copy of all documents in your possession to help the Defender of Rights to understand your situation: exchanges with organisations and authorities, action taken against you that may constitute repressive measures, etc.



You must inform the Defender of Rights in writing under the conditions laid down in sheet 2.



9.1 The Defender of Rights guides you through each step of the process

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If, after reading the previous sheets in this guide, you are still unsure about the procedure to follow, the Defender of Rights will guide you in your actions, in particular in determining the organisation or authority to be contacted to remedy the facts giving rise to the alert.

9.2 The Defender of Rights protects you from any retaliation or reprisal

—

If, following your alert, you report to the Defender of Rights because you consider that you are the victim of retaliation or reprisal measures as set out in sheet 7, the Defender of Rights, after checking your situation with the organisations in question, establishes the reality of the repressive nature of these measures, will take action to stop them.



This protection is not automatic, and will only be granted, if necessary, after cross examination with the organisation in question.

9.3 *The Defender of Rights is not the competent authority to remedy the misconduct giving rise to your alert*

The Defender of Rights is responsible for guiding you in submitting your alert and protecting you against any reprisals you may suffer as a result of the report, but it is not competent to carry out the necessary checks to establish the reality of the misconduct giving rise to your report and to remedy it.

Only the organisations reported to at the various stages of your procedure are authorised to process your alert.

