

**ENERGY CHARTER
SECRETARIAT**

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Related documents: CC 711 Rev, Mess 1850/21
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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Adoption by correspondence – Whistleblowing Guidelines

By CC 711 Rev dated 15 June 2021, the Energy Charter Conference was invited to approve the whistleblowing guidelines. As specified by Rule 19(b) of the Rules of Procedure concerning the adoption of decisions by correspondence, members of the Energy Charter Conference were informed that any delegation not in a position to approve the above decision should notify the Secretariat of its position in writing by no later than 5 July 2021.

Having received no objections within the specified time limit, on 5 July 2021, the Conference **approved** the International Energy Charter Whistleblowing Guidelines with immediate effect (attached together with new Regulations 2-bis.1 and 2-bis.2).

The new Regulations 2-bis.1 and 2-bis.2 included in the Staff Manual refer only to Officials, while similar provisions are introduced for secondees, visiting scholars, interns and staff on loan in their internal rules. In addition, the references to the Management Committee and the Head of [the Finance & Administration/External Activities and Administration] Unit are in brackets since the Conference has not yet approved them.

Keywords: Whistleblowing Guidelines, Staff Regulations and Rules, Amendment

International Energy Charter Whistleblowing Guidelines

1. Introduction

1.1. General

Having procedures for raising concerns about serious irregularities, fraud, corruption or misuse of resources or other serious wrongdoings is relevant for all responsible organisations and for the people who work there. While good internal control systems can reduce the probability of something going seriously wrong, the risk can never be reduced to zero. Where this risk materialises, the first people to realise or suspect the problem will often be those who work in or with the organisation. Yet, unless the culture is one where employees believe that it is safe and accepted that such concerns are raised, the risk is that people will stay silent. This denies the organisation an important opportunity to detect and investigate the concern, to take any appropriate action and to protect its assets, integrity and reputation.

The most effective way to encourage officials, secondees, visiting scholars, interns and staff on loan to report concerns is to provide assurance of protection of their position. Clearly defined channels for internal reporting, as well as safe and accepted routes through which officials, secondees, visiting scholars, interns and staff on loan may raise concerns outside the organisation as an option of last resort, should be in place.

Viewed in this way, having whistleblowing procedures and whistleblower protection in place is a question of good management and a means of putting into practice the principle of accountability. They contribute to improving the diligence, integrity and responsibility of an organisation.

To this end, it is necessary to develop, adopt and include the guidelines on whistleblowing in the Staff Manual as well as in the publication regarding the Main Internal Provisions, Rules and Decisions of the Organisation.

While the existing rules have already triggered a number of ILOAT cases, officials, secondees, visiting scholars, interns and staff on loan may be reticent to make full use of the whistleblowing guidelines because of a fear of negative repercussions on their reputation or career. As part of the duty of the Energy Charter Conference and the Energy Charter Secretariat to have regard for the interests of officials, secondees, visiting scholars, interns and staff on loan it is necessary to ensure that officials, secondees, visiting scholars, interns and staff on loan who report serious wrongdoings or concerns in good faith are afforded the utmost confidentiality and greatest degree of protection against any retaliation as a result of their whistleblowing.

As whistleblowing policies and arrangements are widely recognised as an important tool to detect serious irregularities, fraud, corruption and misuse of resources and serious wrongdoings, it is important that officials, secondees, visiting scholars, interns and staff on loan fully understand the types of situations where the obligation to 'blow the whistle' applies, and to whom they should address their concerns.

Providing guidance on this issue is part of the International Energy Charter overall ethics policy, which aims, inter alia, at clarifying the rules regarding professional ethics and conduct in the organisation.

The Energy Charter Conference approves the guidelines on whistleblowing together with the relevant Articles 1 and 2 to be included in the Staff Rules and Regulations (as Regulation 2-bis.1 and Regulation 2-bis.2) as well as in the publication regarding the Main Internal Provisions, Rules and Decisions of the Organisation.

1.2. Basic principles

Officials, secondees, visiting scholars, interns and staff on loan of the Secretariat have a duty to report serious irregularities, fraud, corruption or misuse of resources or other serious wrongdoings. For this purpose, officials, secondees, visiting scholars interns and staff on loan have reporting channels as determined under point 2 'Reporting procedures'.

The principal channel is the normal chain of hierarchical command. If an official, secondee, visiting scholar, intern or staff on loan considers it to be safer to bypass the normal chain of hierarchical command, they must be able to do so.

In particular, the principal channel for serious irregularities, fraud, corruption or misuse of resources or other serious wrongdoings is described under Regulation 2 of the Staff Regulations and Rules and its staff circular.

Officials, secondees, visiting scholars, interns and staff on loan who report on serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings in good faith must not under any circumstances be subject to retaliation for whistleblowing. These officials, secondees, visiting scholars, interns and staff on loan must be protected and their identity must remain confidential if they so desire.

The Secretariat or the External Auditor or the Chair/Vice-Chair of the Conference [or the Management Committee] must verify the reported facts in the appropriate manner and, if they are confirmed, the Conference and the Secretariat will take all necessary steps to ensure the appropriate follow-up. The rights of defence of any person implicated by the reported incidents must be respected. Malicious or frivolous denunciations will not be tolerated.

1.3. Scope of the guidelines

The International Energy Charter whistleblowing guidelines apply to all officials, secondees, visiting scholars, interns and staff on loan of the Secretariat, irrespective of their position.

Under the whistleblowing guidelines, officials, secondees, visiting scholars, interns and staff on loan have to report serious irregularities, fraud, corruption or misuse of resources or other serious wrongdoings. As the whistleblowing policies and arrangements are essentially a detection mechanism to bring cases to the attention of the relevant authorities, the duty to report concerns only serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings, and particularly those that may be detrimental to the financial interests of the Conference.

Accordingly, not every reporting qualifies as whistleblowing in the sense of these guidelines. For example, the guidelines are not intended to apply to the reporting of the following types of information:

- Information already in the public domain (for example newspaper articles, publicly available audits);
- Unsubstantiated rumours and hearsay;
- Matters of a trivial nature;
- Disagreements over legitimate policy;
- Information not linked to the performance of one's duties.¹

Neither do the guidelines apply to information for which specific procedures are available to an official, secondee, visiting scholars, interns and staff on loan:

- Personnel issues where officials have a personal interest in the outcome. In these cases, officials may exercise their statutory rights under the Staff Manual.
- Harassment claims and personal disagreements or conflicts with colleagues or hierarchy for which, Regulation 25-bis of the Staff Manual applies.

Nor do the guidelines apply to disclosures that cannot be considered as reasonable or honest, such as:

- Abusive disclosures (repeated disclosures of alleged facts aimed merely at paralysing a service);
- Malicious, frivolous or potentially defamatory disclosures (i.e. false or unverifiable accusations with the aim of harming another person's integrity or reputation).

1.4. Definitions

For the purpose of the guidelines, a 'whistleblower' is an official, secondee, visiting scholars, interns and staff on loan acting in good faith, who reports facts discovered in the course of or in connection with her or his duties which point to the existence of serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings. The reporting should be done in writing, and without delay, as determined under point 2 'Reporting procedures'.²

'Good faith' can be taken to mean the belief in the veracity of the reported facts, i.e. the fact that the official, secondee, visiting scholars, interns and staff on loan reasonably and honestly believes the transmitted information to be true. Good faith is presumed unless and until proven otherwise.

'Retaliation' is defined as any direct or indirect action or threat of action which is unjustly detrimental to the whistleblower and resulting from the whistleblowing,

¹ This is not to say that the Energy Charter Secretariat does not react to this information, but that the whistleblowing guidelines do not apply in this case.

² Prior to reporting, officials, secondees, visiting scholars, interns and staff on loan may seek guidance and support as described in section 5. This does not have to be done in writing.

including, but not limited to, harassment, discrimination, negative appraisals and acts of vindictiveness.

‘Confidentiality of identity’ means that the identity of the whistleblower is known to the recipient of the information but is kept confidential vis-à-vis the person(s) potentially implicated in the serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings reported and used on a strict need-to-know basis.

‘Anonymity’ refers to the situation whereby the identity of the source of the information is not known to the recipient.

Officials, secondees, visiting scholars, interns and staff on loan who make a report in bad faith, particularly if it is based knowingly on false or misleading information, shall not be protected and shall normally be subject to disciplinary measures. The Secretariat and/or the Secretary-General and/or the Deputy Secretary-General and/or the External Auditor and/or the Chair and/or Vice-Chair of the Conference [and/or the Management Committee] bear the burden of proof in this context.

2. REPORTING PROCEDURES

2.1 REPORT TO THE IMMEDIATE SUPERIOR AND/OR THE DEPUTY SECRETARY GENERAL AND/OR THE SECRETARY-GENERAL

Officials, secondees, visiting scholars, interns and staff on loan who, in the course of or in connection with their duties, discover that serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings may have occurred or may be occurring within the Secretariat, are obliged to report this discovery forthwith and in writing to their immediate superior and/or the Deputy Secretary-General and/or the Secretary General.

2.2 Report to one of the External Auditor and the Chair/Vice-Chairs of the Conference [and the Management Committee])

If there is a concern that this disclosure may lead to retaliation or that the intended recipient of the report is personally implicated in the serious irregularities fraud, corruption or misuse of resources or serious wrongdoings or the official, secondee, visiting scholars, interns and staff on loan considers that the allegation was not properly addressed within the period indicated in section 4 below, the official, secondee, visiting scholar and intern in question should bypass this direct means of internal reporting. He or she should bring it in writing to the attention of one of the following: the External Auditor and the Chair of the Conference and one of the Vice-Chairs of Conference [and the Management Committee]. Upon receipt of the information reported internally, the Secretariat, or one of the following the External Auditor and the Chair/Vice-Chair of the Conference [and the Management Committee], must give the whistleblower, within 60 days of receipt of the information, an indication of the period of time that it considers reasonable and necessary to take appropriate action.

If no action is taken within that period of time, or if the whistleblower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may make use and in parallel of the possibility of whistleblowing to the External Auditor or the Chair/Vice-Chair of the Conference [or the Management Committee] to which the whistleblower has not reported yet.

Disclosure to the External Auditor or the Chair/Vice-Chair of the Conference [or the Management Committee], which are clearly able to hold the Secretariat to account because of their institutional role, but are also themselves subjected to the duty of discretion, therefore strikes an effective balance between the public interests of confidentiality and loyalty and those of transparency and accountability.

The Conference and the Secretariat are under the obligation to ensure the confidentiality of information received and officials, secondees, visiting scholars, interns and staff on loan of the Secretariat are therefore necessarily subjected to a duty of discretion.

It is up to the official, secondee, visiting scholars, interns and staff on loan to choose the most appropriate channel for reporting the serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings that they must disclose. However, if a matter is reported to others who are not competent to deal with it, it is up to the recipient of the information to transmit, in the strictest confidence, the relevant information and documents to the competent person/authority/institutions and to inform the official, secondee, visiting scholars, interns, staff on loan accordingly.

3. PROTECTION OF WHISTLEBLOWERS

Official, secondee, visiting scholars, interns and staff on loan who reports an allegation of serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings, provided that this is done in good faith and in compliance with the provisions of these guidelines, shall be protected against any acts of retaliation.

It should be noted that official, secondee, visiting scholars, interns and staff on loan will not be expected to fully prove that a serious irregularity, fraud, corruption or misuse of resources or serious wrongdoing is occurring, nor will they lose protection simply because their honest concern turned out to be unfounded. Nevertheless, to benefit of the protection the reporting official, secondee, visiting scholars, interns and staff on loan has to provide credible evidence.

The protection continues to apply in cases of external disclosures, provided that the official secondee, visiting scholars, interns and staff on loan honestly and reasonably believes that the information and any allegation in it are substantially true. In this context, account will be taken of any information the official, secondee, visiting scholars, interns and staff on loan has had from the Secretariat and from the External Auditor and the Chair/Vice-Chair of the Conference [and the Management Committee] following the initial reporting.

In addition, the following specific protective measures apply:

Confidentiality of identity

The protection of a person reporting a serious irregularity, fraud, corruption or misuse of resources or serious wrongdoings in good faith shall be guaranteed, first of all, by the fact that their identity will be treated in confidence.

This means that their name will not be revealed to the person(s) potentially implicated in the alleged serious irregularity, fraud, corruption or misuse of resources or serious wrongdoings, or to any other person without a strict need to know unless the whistleblower personally authorises the disclosure of his/her identity or this is a requirement in any subsequent criminal law proceedings. In all other cases, the Conference, the Secretariat and the External Auditor and the Chair/Vice-Chair of the Conference [and the Management Committee] commits to keep the identity of the whistleblower confidential.

In this respect, the disciplinary procedures opened based on information of which the source is not revealed are regular, as long as it does not affect the possibility of the person who is subject to a subsequent disciplinary procedure to comment on the facts or documents transmitted, or on the conclusions that the organisation draws from them. The disciplinary rules of the organisation must allow it to keep the identity of the whistleblower confidential, while ensuring that the rights of defence of the person concerned are fully respected.

Mobility

If the official, secondee, visiting scholars, interns and staff on loan concerned wishes to be moved to another unit of the Secretariat in order to safeguard him- or herself against potential hostile reactions from his or her immediate work environment, then the Secretariat will take reasonable steps to facilitate such a move. In practice, the officials, secondees, visiting scholars, interns and staff on loan who consider it necessary to move to a different unit may address themselves to the Head of the Finance & Administration [/External Activities and Administration] Unit or the Deputy Secretary General or the Secretary General, which/who will provide them with counseling in order to identify the type of available post, which fits their profile and professional aspirations and needs of the Secretariat.

In urgent and duly justified cases, the protective measure of a transfer will be taken, including to fill an existing vacancy if possible, by the Secretary General or the Deputy Secretary General or the Chair of the Conference in consultation with the Vice-Chairs [and the Management Committee].

Appraisal, advancement and promotion

Particular care will be taken during staff appraisal, advancement and promotion procedures to ensure that the whistleblower suffers no adverse consequences in this context.

Anonymity

In order for the Conference and the Secretariat in particular to be able to apply protective measures, the official, secondee, visiting scholars, interns and staff on loan concerned should identify him- or herself as a whistleblower, and to observe the procedures as outlined above.

The protection offered reduces the need and justification for anonymity.

Anonymity deprives the investigative services of the possibility of asking the source for clarification or more information and enhances the risk of frivolous, malicious or unreliable information. For these reasons, anonymous reporting is not encouraged.

Penalties for those taking retaliatory action

No official, secondee, visiting scholars, interns and staff on loan of the Secretariat may use his/her position to prevent other officials, secondees, visiting scholars, interns and staff on loan from complying with their obligation to report serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings.

Any form of retaliation undertaken by an official, secondee, visiting scholars, interns and staff on loan against any person for reporting a serious irregularity, fraud, corruption or misuse of resources or serious wrongdoings in good faith is prohibited. In such cases, disciplinary measures will be taken against persons performing any form of retaliation.

Limits

As explained above, the whistleblowing provisions are concerned only with reporting of information pointing to serious irregularities, fraud, corruption and misuse of resources or serious wrongdoings. They are not intended to be used as substitutes for grievance procedures where officials, secondees, visiting scholars, interns and staff on loan have some personal interest in – or seek to dictate the outcome. They are also inappropriate for dealing with disagreements over legitimate policies. Their purpose is to allow the officials, secondees, visiting scholars and interns and staff on loan to raise a concern about wrongdoings so that those in charge may look into them.

It should be noted that the protection is lost if the official, secondee, visiting scholars, interns and staff on loan makes unwarranted or damaging allegations that he/she cannot show to be honest or reasonable.

Similarly, if the official, secondee, visiting scholars, interns and staff on loan makes the disclosure for purposes of private gain – for instance, by providing the information to external parties – he/she will forfeit this protection as that would not be a legitimate disclosure in the sense of the whistleblowing guidelines.

Finally, if the official, secondee, visiting scholars, interns and staff on loan is him or herself implicated in the serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings and decides to come forward and report these irregularities, fraud, corruption or misuse of resources or serious wrongdoings, this fact may constitute a significant attenuating circumstance in any ensuing disciplinary proceedings, but it is not

a qualifying disclosure in the sense of these guidelines and does not provide him or her with full protection against disciplinary consequences on the basis of the whistleblowing guidelines.

4. FEEDBACK TO THE WHISTLEBLOWER

The Secretariat or the External Auditor or the Chair/Vice-Chair of the Conference [or the Management Committee] must give the whistleblower with an indication of the time needed to take appropriate action. If no action is taken within that period of time, or if the whistleblower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may address his or her concerns to one of the others referred to in section 2 above.

It should be noted that the whistleblower is entitled to be informed within 60 days of the time needed to take appropriate action, but that it is up to the authority having received the reporting to determine the appropriate course of action.

5. GUIDANCE AND SUPPORT

While reporting serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings is an obligation under the Staff Regulations, some officials, secondees, visiting scholars, interns and staff on loan may be reticent to come forward and report their concerns. In order to help officials, secondees, visiting scholars, interns and staff on loan who are unsure of whether or not certain facts should be reported, the Conference and the External Auditor and the Chair/Vice-Chair of the Conference [and the Management Committee] and the Secretariat offers confidential and impartial guidance and support to (potential) whistleblowers.

Guidance to potential whistleblowers at an early stage also helps to avoid ill-advised reporting, which may cause frustration to the official, secondee, visiting scholars, interns and staff on loan concerned and may be detrimental to the interests and the reputation of the Conference and the Secretariat. This guidance therefore lessens the risks of disclosure-related conflicts.

That is best carried out by a point of contact appointed, taking account of the fact that, in particular, support to whistleblowers and protection against retaliation are essentially the responsibility of the Conference as employer, including the Secretariat.

The Finance & Administration [/External Activities and Administration] Unit, the Legal Affairs, the Staff Committee [and the Management Committee] will provide confidential and impartial guidance on the whistleblowing procedure and respond to such questions as for example,

- whether the information in question is covered by the whistleblowing guidelines,
- which reporting channel may best be used for the information concerned, and
- which alternative procedures are available if the information concerned does not qualify for whistleblowing ('signposting').
- which will also be able to tender advice and guidance to officials, secondees, visiting scholars, interns and staff on loan on protective measures that the

officials, secondees, visiting scholars, interns and staff on loan may wish to seek following the reporting.

Naturally, this guidance is without prejudice to the possibility of the official, secondee, visiting scholar, intern and staff on loan to consult his/her immediate superior.

In case of doubt, officials, secondees, visiting scholars, interns and staff on loan are encouraged to seek the guidance offered to them when contemplating a disclosure under the whistleblowing guidelines.

6. ROLE OF THE SECRETARY GENERAL AND THE DEPUTY SECRETARY-GENERAL

The duty of the Deputy Secretary General and the Secretary General to notify the External Auditor and the Chair/Vice-Chair of the Conference [and the Management Committee] in case of information in accordance with the section 2 above received from officials, secondees, visiting scholars, interns and staff on loan on the basis of the whistleblowing guidelines does not of itself discharge them from their own responsibilities to tackle the serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings

They will therefore have to reflect on whether the evidence provided reveals shortcomings that could be addressed or require other measures; in which case he/she will propose measures to be discussed first by the Senior Management [and then the Management Committee]. In particular, if following such information, it occurs that a procedural or organisational change could prevent the risk of serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings in the future, such measures should be considered and, where appropriate, taken as soon as possible.

Care should be taken that any such measure does not harm any future investigation into the reported facts by others (e.g. the ILOAT, the External Auditor, the Chair/Vice-Chair of the Conference [and the Management Committee]). In case of doubt, managers are therefore advised to consult with the Conference, Chair/Vice-Chair of Conference [and the Management Committee] before taking any such measures.

7. ROLE OF THE EXTERNAL AUDITOR

In case information is brought to the attention of the external auditor (in accordance with the section 2 above), the latter will ask the Secretariat to provide information and evidence, take it into account during the regular financial audit within the framework of its Terms of Reference and in parallel take it to the Conference, [and the Management Committee], the Chair/Vice Chairs of the Conference.

8. ROLE OF THE CHAIR/VICE CHAIR OF THE CONFERENCE [AND THE MANAGEMENT COMMITTEE]

In case allegations are communicated to the Chair/Vice Chairs of the Conference [and the Management Committee] (in accordance with the sections 2 or 7 above), he/she will

request the Secretariat to provide information and evidence. Following an analysis of facts, and considering the relevance of the information, the Chairperson may propose to include an agenda item for discussion at the Conference and bring the issue to [the Management Committee], the Vice-Chairs of the Conference and the External Auditor to take it into account during the Audit(s).

9. COMMUNICATION AND AWARENESS-RAISING

In order to increase the awareness of the whistleblowing guidelines amongst officials, secondees, visiting scholars, interns and staff on loan the new provisions will be included in the Staff Regulations and Rules (as Regulation 2-bis.1 and Regulation 2-bis.2) as well as in the publication regarding the Main Internal Provisions, Rules and Decisions of the Organisation and these guidelines will be given adequate publicity through the internal communication channels in the Conference and the Secretariat while trainings on ethics and integrity should be established that will contain this material.

10. REVISION

The practical application and effectiveness of these whistleblowing guidelines will be evaluated in a year after their adoption and thereafter during the regular review process under Article 34 (7) of the Energy Charter Treaty. In light of the results of this evaluation, these guidelines may be revised as appropriate by the Conference.

11. FINAL PROVISIONS

These guidelines shall enter into force on the date of its approval by the Conference.

ARTICLES ON WHISTLEBLOWING

Article 1 (Regulation 2-bis.1)

1. Any official, secondee, visiting scholar, intern and staff on loan who, in the course of or in connection with the performance of his/her duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including serious irregularities, fraud, corruption or misuse of resources or other serious wrongdoings detrimental to the interests of the Conference or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials, secondee, visiting scholar, intern and staff on loan shall without delay inform either his/her immediate superior and/or the Deputy Secretary General and/or the Secretary-General, or if he/she considers it useful, the External Auditor or the Chair of Conference or the Vice-Chair of Conference [or the Management Committee]. Information mentioned in the first subparagraph shall be given in writing. This paragraph shall also apply in the event of serious failure to comply with a similar obligation on the part of any other person in the service of or carrying out work for the Conference.

2. Any official, secondee, visiting scholar, intern and staff on loan receiving the information referred to in paragraph 1 shall without delay transmit to his/her immediate superior and/or Deputy Secretary-General and/or the Secretary-General and/or the External Auditor and/or the Chair or Vice-Chair of Conference [and/or the Management Committee] any evidence of which he/she is aware from which the existence of the serious irregularities, fraud, corruption or misuse of resources or serious wrongdoings referred to in paragraph 1 may be presumed.

3. Any official, secondee, visiting scholar, intern and staff on loan shall not suffer any prejudicial effects on the part of the institution as a result of having communicated the information referred to in paragraphs 1 and 2, provided that he/she acted reasonably and honestly.

4. Paragraphs 1 to 3 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official, secondee, visiting scholar, intern and staff on loan in the course of, proceedings in legal cases, whether pending or closed.

Article 2 (Regulation 2-bis.2)

1. Any official, secondee, visiting scholar, intern and staff on loan who further discloses information as defined in Regulation 2-bis.1 para. 1, shall not suffer any prejudicial effects provided that both of the following conditions are met:

(a) the official, secondee, visiting scholar, intern and staff on loan honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and

(b) the official, secondee, visiting scholar, intern and staff on loan has previously disclosed the same information to his/her immediate superior and/or the Deputy Secretary and/or Secretary General or the External Auditor, or the Chair of Conference, or the

Vice-Chair of Conference [or Management Committee] and has allowed them in the period of time set by them, given the complexity of the case, to take appropriate action. The official, secondee, visiting scholar, intern and staff on loan shall be duly informed of that period of time within 60 days.

2. The period referred to in paragraph 1 shall not apply where the official, secondee, visiting scholar, intern and staff on loan can demonstrate that it is unreasonable having regard to all the circumstances of the case.

3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official, secondee, visiting scholar, intern and staff on loan in the course of, proceedings in legal cases, whether pending or closed.