

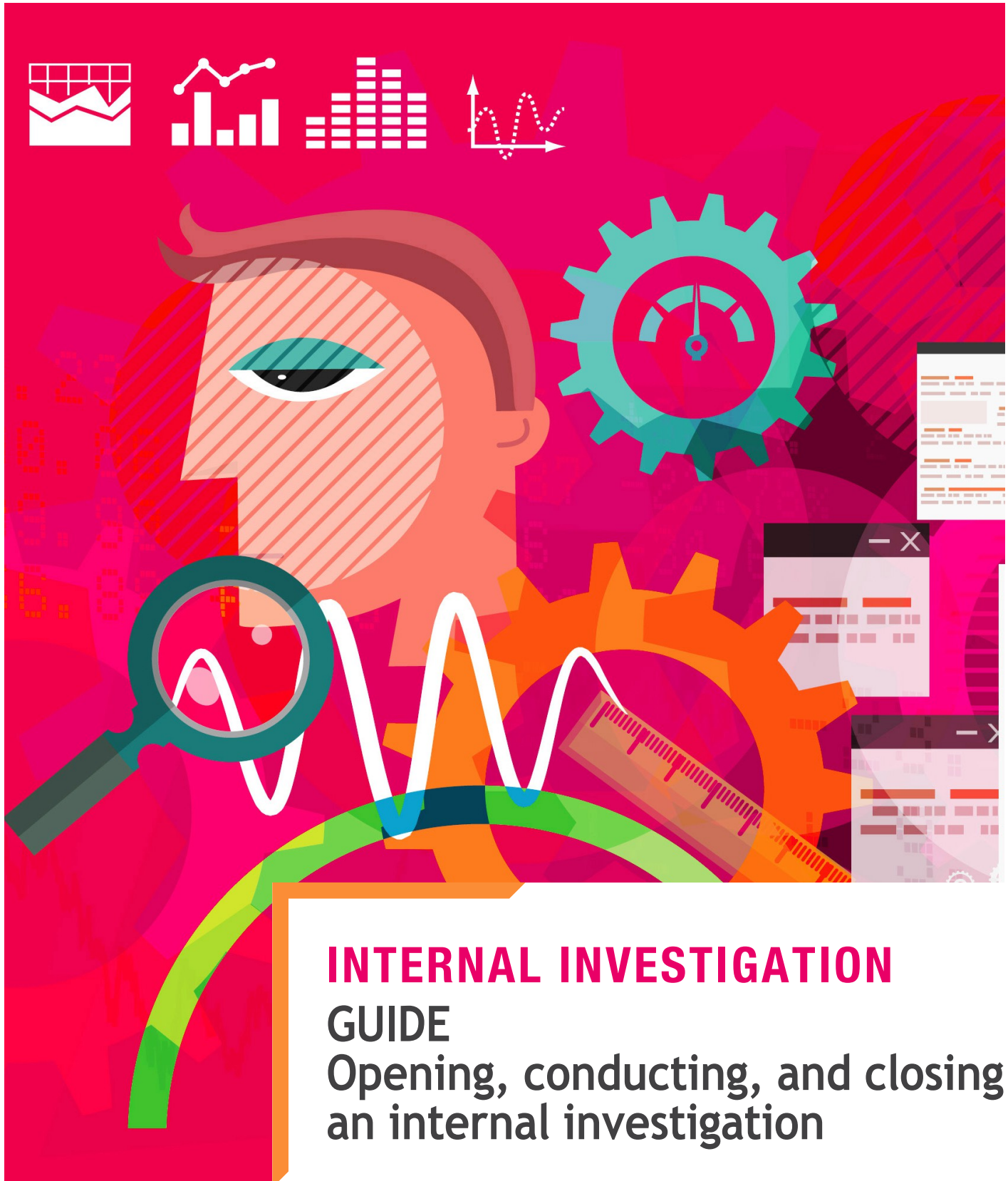


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PRELIMINARY REMARKS

OBJECTIVE OF THIS GUIDE

This guide is the result of a collective effort by professionals in ethics and compliance responsible for internal investigations within their companies, under the joint direction of the AFJE and the Cercle d'Éthique des Affaires. Its purpose is to provide practical assistance to professionals in charge of these matters, helping them to structure effective and legally robust methodologies for internal investigations and to successfully carry out this type of exercise.

The guide is divided into five sections. The first section is devoted to the main principles of investigations. The next three sections cover the three stages of an investigation: from opening, through conducting interviews, to closing. Finally, the last section focuses on the status and profile of the internal investigator.

The majority of best practices gathered in this document reflect a consensus among the experts consulted. For the rest, given the relatively recent nature of the topic and the need to adapt practices to the sector of activity, the size of the company, or the scope of the investigations, it was deliberately decided to allow different existing approaches to be reflected.

Please note! This guide has been written in French and is primarily intended for French or international companies subject to French law. Although some of the practices described in this guide are generally applicable in an international context, we invite readers to ensure that they comply with local regulations.

CONTEXT

Increasingly subject to strengthened compliance requirements, large companies have, in recent years, systematically established ethics policies prescribing rules to follow and behaviors to avoid.

Required either by law or in practice, internal whistleblowing systems have emerged as one of the essential elements of any compliance framework, enabling the reporting of potentially inappropriate behavior. By their very existence, these systems require internal investigations, the purpose of which is to establish or refute the validity of the facts presented by the whistleblower.

Most large companies, faced with a significant increase in reports made through whistleblowing systems, are obliged to define robust, efficient, and consistent internal investigation methodologies, whether the investigation is conducted internally or outsourced.

SCOPE OF APPLICATION

This guide was written by professionals working in internationally oriented companies headquartered in France. It aims to propose best practices that may be applied in an international context, subject to local legal specificities.

WHAT IS AN INTERNAL INVESTIGATION?

This document covers all procedures conducted by or on behalf of a company to establish or refute the truth and materiality of a fact that may constitute a violation of the law, the company's ethics and compliance policy, its code of conduct, internal regulations, or any equivalent document in foreign countries.

It does not have the same purpose as an audit, which aims to periodically or occasionally assess the proper implementation of a compliance program with regard to applicable regulatory or internal standards.

However, it is not a police investigation, as internal investigators do not have the prerogatives or resources of judicial police officers. As such, they must reconcile their investigation methods with the individual rights of employees.

WHAT IS AN INTERNAL INVESTIGATOR?

This guide refers to an internal investigator as any person—regardless of profile, experience, or training—who is regularly tasked, on behalf of their company, with conducting internal investigations, particularly interviews.

SHEET 1: THE MAIN PRINCIPLES OF INTERNAL INVESTIGATION

1. Guiding principles for conducting internal investigations

The objective of an investigation is to verify the truth and materiality of facts that may constitute a violation of the company's ethics and compliance policy, its internal regulations, or applicable law, and to contribute to establishing the truth.

However, this objective cannot be absolute and justify any type of investigative measures or actions; it must always be balanced with the individual rights and freedoms of the parties concerned.

The working group members recommend that internal investigations be based on the following principles:

- ▶ **Impartiality:** the investigation is conducted with complete objectivity and independence, considering both incriminating and exculpatory elements throughout the process. It respects the presumption of innocence and requires the absence of conflicts of interest, real or perceived, between the investigation team and the parties concerned. In this respect, particular attention must be paid to ensuring the absence of current or past personal or professional relationships likely to generate a lack of neutrality (or the perception thereof) from the very start of the investigation.
- ▶ **Proportionality:** the investigative measures implemented must be proportionate to the facts that gave rise to the investigation and may not infringe upon employee.
- ▶ **Fairness:** the collection of evidence within the investigation is carried out in accordance with clearly established, consistent, and publicly available internal procedures within the company.
- ▶ **Respect for privacy:** the collection, consultation, and archiving of personal data gathered in the course of an internal investigation are carried out in compliance with applicable legislation.
- ▶ **Confidentiality:** the investigation team strictly observes confidentiality throughout the investigation, in order to protect the parties concerned from the risk of retaliation, preserve their reputation, or avoid causing unnecessary harm. The parties involved in the investigation—whistleblower, facilitators, accused employee, witnesses—are equally bound by this obligation of confidentiality.
- ▶ **Respect:** The investigation team shall conduct the investigation and treat the parties involved with courtesy.

2. Internal investigation policy

The company must formalize an internal investigation policy to ensure transparent, good-faith, timely, and consistent handling of reports. This policy must be made publicly available within the company.

Subject to requirements of local law, the principles and methodology of investigations should be similar for all investigations conducted by or on behalf of the company, regardless of who is actually responsible for carrying them out—internal investigator, employees trained in investigation, or an external service provider.

This policy may be supplemented by an “investigator charter” intended for employees responsible for conducting investigations within the company (cf. Sheet 5: “*The status of the internal investigator*,” page 21).

SHEET 2: OPENING THE INVESTIGATION

As soon as serious indications of facts likely to constitute violations of the ethics and compliance policy, the internal regulations, or applicable law are brought to the attention of the company, its management, or the department responsible for managing the internal whistleblowing system, the opening of an internal investigation must be carefully considered.

The channel, triggering event, or the status of the person making the report is of little importance. Without being exhaustive, it may stem from:

- Receipt of a report through the internal whistleblowing system from an employee or someone external to the company;
- A report made orally by an employee or someone external to the company;
- The result of an internal or external control or audit;
- The result of the initiation, actual or potential, of judicial proceedings by a French or foreign prosecuting authority;
- Allegations or media controversies.

1. Processing time

The company must demonstrate responsiveness in handling reports. The responsiveness of the company is considered by the judge when assessing compliance with the employer's safety obligation toward employees or when assessing the good faith of the company in cases of breaches of probity.

The timeframe for conducting an investigation may vary considerably depending on the complexity of the facts or the time elapsed since the reported facts. While the quality of the investigation must always take precedence over speed, responsiveness remains essential to reduce the risks of evidence being forgotten or destroyed, as well as to limit the anxiety experienced by parties concerned by the investigation (the notion of a "reasonable timeframe").

2. Decision to open an investigation

Based on its internal organization and available resources, the company defines a governance structure enabling it to process reported facts efficiently, objectively, and impartially. In this context, three phases are generally distinguished: receipt of the alert (most often by the ethics or compliance department), analysis of the reported facts, and, based on this analysis, the decision to open—or not—an investigation, as well as the conduct of the investigation.

It is recommended, whenever possible, to entrust the decision to open an investigation to a collegial body, at least for critical alerts.

► **Collegiality of the decision**

The collegial body operates under the responsibility of the department in charge of managing the whistleblowing system—commonly, the ethics or legal department, or any other department whose functional and hierarchical attachment guarantees independence. It should meet at the start of the investigation and whenever necessary during its course.

This body may be permanent or ad hoc.

It is recommended that the collegial body be composed of complementary, cross-functional expertise. Its composition may vary depending on the nature of the reported facts, and on the size and structure of the company. By way of example, and without being exhaustive, participants may include, under the responsibility of the department in charge of managing the internal whistleblowing system, and subject to any real or perceived conflicts of interest due to a relationship with one of the parties to the investigation:

- A legal officer;
- A human resources officer;
- A finance officer;
- A security officer;
- An IT officer;
- An occupational health representative.

Each member of this Committee must sign a confidentiality agreement.

► **Formalism and traceability**

It is recommended that the collegial body maintain a record of reports received and processed, in the interest of traceability. This document should include at least the following:

- Meeting date;
- Date the alert was received;
- Contacts made;
- Initial analysis;
- Details of the allegations;
- Any additional information;
- Recommendations on investigation strategy;
- Scope of the investigation;
- The opinion issued by the collegial body.

► **Modalities of the internal investigation**

When the collegial body deems it appropriate to open an investigation, it assigns responsibility for conducting the investigation to an internal or external team and issues them with a mission order.

An external team is preferred in cases where the company does not have the internal capacity to conduct the investigation in an objective, impartial, independent, and neutral manner, or lacks the expertise required to examine the case due to its complexity, or in case of a lack of competent internal resources. The external team must be bound by strict

compliance with the company's internal investigation policy and investigator charter.

The internal team, trained in or dedicated to internal investigations, benefits from a sound knowledge of the organization and its internal processes. Its methodology and professional independence are ensured by the obligation for employees to comply with the internal investigation policy and the investigator charter. Care must be taken to ensure that no member of the internal team has a real or perceived conflict of interest due to a relationship with one of the parties to the investigation, nor can be subjected to retaliation because of their involvement in an investigation.

3. Drafting the Mission Order

The handling committee drafts a written and dated mission order. It is recommended that it be signed. The order must specify the scope of the investigation, the allegations to be verified, and the designated investigation team.

It may also include, whenever relevant:

- Date the alert or triggering event was received;
- Assessment of conflicts of interest, if applicable;
- Results of the preliminary analysis stage, if applicable;
- Safeguard measures already taken or to be taken, if applicable;
- "Resource" persons who can provide information or technical assistance;
- Any other information necessary for the smooth conduct of the investigation.

The mission order is then transmitted to the investigation team.

4. Preparation of the Investigation

Every investigation must be prepared and documented. Based on the mission order, the investigation team:

- Collects the documentation necessary for investigation preparation;
- Implements safeguard measures or ensures that already implemented measures are sufficient, and collects evidence necessary for the preparation of the investigation;
- Identifies resource persons;
- Analyzes available documentation and prepares the interview question framework.

4.1. Collection of Documentation Necessary for Investigation Preparation

The investigation team gathers all documentation necessary to prepare the investigation. Without being exhaustive and depending on the scope of the investigation, this may include, for example:

- Applicable regulations and potentially relevant legal provisions related to the allegations;
- All applicable internal policies and procedures;
- Relevant organizational charts;
- Description of the organization within which the alleged facts occurred;

- Job descriptions or functions of the parties involved in the investigation;
- Emails, SMS, and professional instant messages sent by the parties involved;
- Applicable risk maps;
- Applicable internal control rules (Key Internal Controls).

4.2. Safeguard Measures and Evidence Collection

Where justified and provided they respect the principle of proportionality, safeguard measures may be taken by the investigation team. They must be foreseen or compliant with the mission order. Their purpose is to ensure the employer's safety obligation or to preserve evidence.

Without being exhaustive, these may include:

- Temporary relocation (or implementation of remote work where possible to avoid interactions) of the accused, or if not feasible, the alleged victim, to protect them;
- Requesting information or data from relevant departments;
- Suspension of the employment contract with continued salary, or suspension of service provision;
- Precautionary suspension in exceptional cases of particular severity.

To collect and preserve evidence, this may also involve:

- Accessing emails and instant messages sent or received via a professional account;
- Accessing SMS sent or received on a professional mobile device;
- Accessing documents stored on a work computer, connected USB drives, and, more broadly, any professional tools or media (subject to the organization's information security rules).

The rules applicable to safeguard measures vary according to the applicable legislation. Local legal specificities must be considered, and a proportionality assessment must be carried out to define the appropriate level of measures to adopt.

In France, emails and personal files labeled as "personal" or related to union activities by the employee cannot be accessed. The same applies to personal email accounts (Gmail, Yahoo, etc.) and social media accounts (WhatsApp, WeChat, etc.) accessed from professional computers. Subject to the principle of proportionality, this restriction may be lifted exceptionally:

- In the presence of the employee, with their consent;
- In the absence of the employee, after notifying and summoning them;
- In case of a "particular risk or event" for the company;
- With judicial authorization, when there are legitimate reasons not to inform the employee;
- When there is abusive use of "personal" labeling, for example if the employee claims that all their emails, documents, etc., are personal.

Any seizure is carried out in a way that ensures the evidence remains unaltered, for example by sealing the seized media or in the presence of a huissier de justice.

Seized media or extracted mailboxes are preserved by the huissier, a designated representative for foreign subsidiaries, or by any other means that ensures their integrity. The investigation team only works with a copy of the collected and referenced data.

During the investigation, collected data is stored in a secure space accessible only to the investigation team and, if necessary, the manager responsible for the whistleblowing system or any person needing access for the purposes of the investigation.

At the end of the investigation, only data that is necessary and used will be retained in a

secure space. All other data must be destroyed.

4.3. Resource Persons

“Resource persons” are individuals who may assist the investigation team (e.g., by providing procedures, explaining processes, etc.).

They are identified either by the collegial decision-making body, among ethics contacts, or in their capacity as experts (IT tools, accounting, legal, etc.). The list can be adapted depending on the case.

Resource persons should be designated to act independently, objectively, and in the mutual interest of the parties involved (not personally involved in the case, and ensuring confidentiality of the procedure). The investigation team must clearly explain the reasons for involving these resource persons and may, if appropriate, have them sign a confidentiality agreement.

It is preferable not to designate the immediate superior of the parties or of the accused as a resource person, as this could create confusion about the role they are expected to play or compromise the proper conduct of the investigation. They may, if necessary, be interviewed as a witness.

Cases Involving a Third Party

When the reported facts involve one or more third parties outside the company, the collegial body specifies the scope of the investigation in the mission order and ensures the cooperation of the third parties by informing them of the situation and requesting that they respond to inquiries (requests for interviews or information), unless such a right is already provided for in the contract binding them (for example, through audit clauses). The procedures and rules governing the investigation process must be communicated to the third party and accepted.

If necessary, a joint investigation may be conducted.

SHEET 3: INTERVIEWS

1. General Considerations

An investigation is an exceptional event in the life of individuals, teams, and organizations. Its course can be stressful for the parties involved and may have serious legal consequences. In this context, it is recommended to guide the practices of investigation teams with an investigator charter, whose terms must be strictly observed.

In all circumstances, the investigation team must act with courtesy, moderation, objectivity, and impartiality. They maintain relations with all parties involved based on respect for the individual and their dignity.

At all stages of the investigation, the team reminds the parties of the importance of maintaining confidentiality and has them sign a confidentiality agreement, which must be completed no later than before the start of the interview.

2. Invitation to the Interview

2.1. Persons to Be Heard

The investigation team summons the different parties involved in a predetermined order and ensures that witnesses for and against the case are heard, as far as possible, in a proportionate manner.

Although the order of interviews may vary depending on the situation, it is, for example, possible to sequence meetings as follows:

- Meeting with the whistleblower, and if the whistleblower is not the victim, with the victim;
- Meeting with human resources and line managers;
- Meeting with witnesses;
- Meeting with the accused.

The investigation team documents and justifies the choice of witnesses to be heard. This information is attached to the investigation report.

The selection of interviewees depends on the allegations raised by the whistleblower and the organization of the department(s) to which the parties belong. The team must hear all persons deemed useful for establishing the truth. It is strongly recommended to hear the whistleblower first, except when the whistleblower is anonymous.

While the circle of persons to be interviewed should not be unduly restricted, the team must also ensure it is not excessively broad, to avoid hearing individuals who are merely echoing rumors. The investigation team is not required to hear all persons cited by the accused or requested by them as a "guarantee" of their morality or professionalism.

2.2. Interview Invitation Procedure

Before inviting the parties to an interview, the investigation team ensures their availability (e.g., by phone). At the start of each telephone exchange, the team ensures that the person can speak freely (particularly for those in shared offices or remote work).

The team informs the parties that this is an investigation without revealing the precise reasons for the inquiry. Provided that this does not compromise the integrity of the evidence, the team may indicate whether the person is being heard as a witness.

The team decides on the notice period according to the investigation strategy established.

The invitation must be sent confidentially. If invitations are sent in writing via company tools, they should be transmitted tactfully and discreetly (private message, confidential, etc.) without mentioning an “investigation” in the email subject.

The location, date, and time of the meeting are specified in the invitation. The investigation team should, as far as possible, demonstrate flexibility to accommodate the constraints of the parties involved.

3. Interview process

3.1. Practical Arrangements

The investigation team prioritizes in-person interviews, especially with the alleged victim, except in exceptional circumstances. Interviews should be held in a neutral location, away from the person’s usual workplace, protected from external observation or eavesdropping, to ensure anonymity of the parties involved and confidentiality of the discussions.

The team ensures that interviewees can express themselves in their native language or a language of their choice. If not, a translator should be provided.

It is recommended to have all necessary items for the smooth conduct of the interview (water bottles, pens, paper) available and to remove any unnecessary objects that could cause distractions or pose security risks.

The duration of the interview should be planned in advance to cover all intended topics and to allow the interviewee to take breaks if requested.

The investigation team takes all necessary measures to ensure that the parties involved do not encounter each other during interviews.

If the team deems additional information necessary, parties may be re-interviewed. These follow-up interviews usually involve the whistleblower and the accused to confirm or refute the information gathered during the investigation. This can also be done in writing and attached to the report, if necessary.

It is not mandatory to offer or allow interviewees to be accompanied by a person of their choice, as an internal investigation is not equivalent to a disciplinary procedure. Furthermore, it is recommended to preserve the confidentiality of discussions by limiting the dissemination of information exchanged during interviews.

3.2. Formalities

Before each interview begins, the investigation team must obtain a signed copy of the confidentiality agreement.

The dates, locations, and times of interviews must be recorded in the report while preserving the anonymity of the persons involved—for example, by assigning an identification number.

Where possible, and with the explicit consent of the interviewee, interviews may be recorded to produce an accurate transcription (verbatim). This transcript should be reviewed and ideally signed or validated by all present or at least by the interviewee. The recording is destroyed after signing.

If applicable, the team ensures that the interviewee has enough time to read the interview report to validate its accuracy and sign it. This validation may take place immediately after the interview or later via email, taking care to prevent any risk of confidential information leakage.

If a person does not wish to answer or feels unable to answer a question, this must be documented in the report, as it may serve as an indicator—among other factors—of lack of cooperation or loyalty.

3.3. Interviews

It is the responsibility of the investigation team to establish a respectful and courteous interview environment. Therefore, before beginning the interview, it is recommended that the investigation team introduce themselves, clearly explain the steps of the investigation process, and offer to answer any preliminary questions from the individuals being interviewed.

It is recommended that the investigation team consist of at least two investigators in order to preserve the integrity of the investigation (and to avoid any risk of undue influence, blackmail or threats, or even corruption). One of the investigators leads the interview. The other member of the team is responsible for taking notes.

The interview should allow each party to give their version of events. The investigation team is encouraged to look for corroboration or inconsistencies in the statements of the parties interviewed and to seek additional evidence. The aim should be to obtain factual and accurate information (dates, places, people involved, words spoken) rather than to gather perceptions.

Before, during, or after the interview, at the most appropriate time, the investigation team informs the persons interviewed of the possible seizure of their professional tools, if applicable. The persons interviewed may provide the investigation team, during or after the interview, with any information they deem necessary to support their statements.

It is recommended that the investigation team use a structured set of questions. However, this questionnaire is not intended to be exhaustive, and the investigation team should feel free to go beyond the planned questions to ask any questions necessary to uncover the truth.

The investigation team must listen actively and avoid interrupting the people being interviewed, unless they do not answer the questions asked or respond in a way that is off-topic. Investigators must be mindful of their non-verbal behavior and the bias it may introduce.

Open-ended questions should be prioritized whenever possible. Conversely, leading questions that suggest answers or express personal opinions, or challenge the impartiality of the interviewee, should be avoided. The questioning method should be adapted to the interviewee and the subject matter. Some questions may be asked multiple times in different forms to cross-check responses.

Examples of Questions That May Be Asked During the Interview

- Can you describe your role within the company?
- How long have you been working in the company?
- To whom do you report your activities?
- Can you provide information about the situation within your team or Team X?
- Have you experienced any problems with someone in your team or in Team X?
- Do you know/how do you know the person involved in the allegations?
- On what occasions do you interact with the person in question?
- How often do you interact with them?
- How would you describe these interactions?
- Please describe the event or incident you are referring to.
- What happened? When did it occur?
- Where did it take place?
- Who else was present?
- Do you recall the statements that were made?
- Were there any witnesses to the statements made?
- How did you react to the situation?
- Did you or anyone else comment on those statements?
- How did you feel about the remarks made during the event?
- Did you discuss the incident with anyone else?
- If yes, with whom did you speak, when, and what did you discuss?
- Are you aware of any other incidents or similar complaints involving the person in question?
- Are there any notes, physical evidence, or other documents related to the incident? Can you provide them to us?
- How have you implemented the rules on ethics, compliance, and internal control (particularly in cases of disputed supplier selection or payment)?
- Have you completed internal training on ethics, compliance, and internal control rules?
- In what context did you meet with your competitors? What information did you exchange with them?
- Did you obtain internal approvals before making your decision?
- Would you like to share any other elements that could be useful for the investigation?
- At the end of the interview: How do you feel?

To conclude the interview, it is recommended that the investigation team express their gratitude by thanking the interviewee for their time and cooperation and open the communication by encouraging the interviewee to contact the investigation team if they remember or become aware of any additional relevant information or if they feel they are being pressured or asked for information regarding their testimony. In addition, it is important to reiterate the principle of non-retaliation against the whistleblower, facilitator, witnesses, or any other person involved in the investigation.

4. Analysis of the Interviews

After conducting the interviews, the investigators carry out the analysis based on all collected documents and evidence, the interview reports, and their own notes. The investigation team performs the analysis only once all information required to reach conclusions has been gathered. Cross-checking these pieces of information may identify inconsistencies. It also allows the team to ensure that all aspects of the allegations have been covered and that responses have been obtained from all relevant persons so as to establish, as objectively as possible, the level of proof for each allegation.

Not all investigations necessarily result in a sufficient level of proof to confirm or refute the reported allegations (so-called “non-conclusive” allegations). It is nevertheless necessary to document each investigation as precisely as possible in order to prepare the company for any potential consequences of the situation under review.

The investigation team should rigorously analyze the content of each interview and of the evidence collected during the investigation. In this context, it is recommended to:

- Methodically re-read the interviews and not rely on memory. Interview summaries should be prepared before drafting the investigation report in order to have a comprehensive view of all information collected during the interviews;
- Communicate regularly among members of the investigation team and, where appropriate, with the collegial body supervising the investigation;
- Systematically reference and index documents;
- Classify evidence as either incriminating (in support of the allegation) or exculpatory (in defense of the subject) in relation to the allegations;
- Identify the category of evidence (direct or indirect, volume, recurrence, etc.);
- Identify elements that fall outside the specific allegations but that may be useful for understanding the context.

SHEET 4: CLOSING AN INVESTIGATION

1. Drafting the Investigation Report

The investigation team drafts an investigation report, the format of which should preferably be standardized across the organization. The report must be written as clearly and precisely as possible so that it can be understood by everyone, including those who did not take part in the investigation, in case it is later used in judicial proceedings or litigation.

The investigation report is anonymized. To ensure data confidentiality and protect the identity of those who participated in the investigation, it is recommended that only a summary of the investigation report be shared with those responsible for deciding and implementing remediation measures or possible disciplinary sanctions. If the full investigation report must be shared with those who need access, all necessary measures must be taken to guarantee data confidentiality and protect the identity of participants.

The investigation report should include, in particular:

- A description of the context of the alert
- A summary of the allegations
- A synthesis of findings (substantiated / unsubstantiated / inconclusive) and the severity of the facts in light of applicable laws, regulations, or company policies
- Recommendations / proposed remediation measures and, where appropriate, the possibility of disciplinary action (without specifying the type of sanction, which remains at the employer's discretion)
- The investigation strategy
 - Composition and functioning of the collegial body handling the alert
 - Composition of the investigation team
 - Dates of the interviews
 - Any interim measures taken
 - External consultants and lawyers, where applicable
- The environment and organization of the entity concerned
- Documentary review
- Handling of allegations
 - Details of allegations
 - Findings directly related to allegations
- Elements outside the allegations that emerged during the investigation, if any
- Appendices
 - List of interviews
 - Identification of sources enabling de-anonymization
 - List of documents obtained and used

With respect to the anonymization of the investigation report, each source should be assigned a number, and a separate appendix to the report should allow the sources to be identified. Where applicable, the appendix should be kept separate from the main investigation report.

2. Recommendations

Based on the investigation report, any facts constituting a violation of the ethics and compliance policy, internal regulations, or applicable law must give rise to measures aimed at stopping such conduct or, where appropriate, reducing the likelihood of the associated risk recurring.

Different decision-making methodologies coexist. It is important to determine which one is most appropriate in light of the functioning and resources of the organization conducting the internal investigation. For the sake of conciseness, this guide only details two opposing methodologies, which can also be combined:

- Some organizations assign the collegial body responsible for handling the alert (see Fact Sheet 2, Collegiality of Decision-Making) the task of proposing remediation measures or the possibility of disciplinary sanctions to be implemented based on the investigation report. In this case, the decision is either recommended to or binding upon the hierarchical managers of the person to be sanctioned, and the collegial body handling the alert may ensure follow-up.
- Some organizations assign the collegial body handling the alert the task of defining, based on the investigation report, a severity level of the facts on a predetermined scale (e.g., from 1 to 5). It is then the responsibility of the hierarchical manager or HR to determine an appropriate sanction and ensure follow-up where applicable.

3. Information to Parties Concerned by the Investigation

Before any communication to the parties concerned by the investigation, the investigation team determines, together with the collegial body handling the alert, what information may be disclosed and how the results of the investigation should be communicated.

Barring exceptional circumstances, results may be shared in the following order:

- HR and hierarchical managers of both the person implicated and the whistleblower: the conclusions of the investigation and the severity level of the facts, or, where applicable, the recommendations or imposed sanction, are transmitted—ideally first orally, then in writing.
- The whistleblower is informed—first orally where possible, then obligatorily in writing—of the conclusions of the investigation in relation to their allegations, ensuring the anonymity of the parties involved. Recommendations for sanctions or imposed sanctions are not communicated to the whistleblower, in accordance with the principle of confidentiality and respect for privacy. Organizational measures, however, may be communicated if the company deems it necessary.
- The person implicated is informed—first orally and then in writing—of the conclusions of the investigation. It may be useful to have their hierarchical manager present during the oral debriefing.

- Witnesses are not informed of the conclusions of the investigation except where the collegial body handling alerts deems it necessary (for example, when recommendations may affect them).

The communication of investigation findings can be a sensitive phase of the process. To ensure this step goes as smoothly as possible, it is recommended to:

- Share with each person only the parts of the investigation that directly concern them;
- Remain factual in presenting findings and avoid value judgments;
- Explain clearly the evaluation of the severity of the misconduct and, where applicable, the sanction level;
- Safeguard confidentiality of information and discussions, and preserve the anonymity of witnesses and the whistleblower;
- Ensure, as far as possible, the emotional stability of the parties involved at the time of debriefing and arrange psychological support for the individual requesting it or, if necessary, for the work group.

4. General Information

Communication about the internal investigation process varies widely from one company to another. Best practices depend on striking the right balance between the need to protect the confidentiality of investigation outcomes and the desire to promote transparency of the process and build the trust of both internal and external stakeholders in its robustness.

4.1. Judicial or Administrative Authorities

An internal investigation is by nature confidential, not only within the company but also vis-à-vis third parties.

Nevertheless, the investigation report may be disclosed to administrative or judicial authorities, in particular in cases of:

- Labour tribunal litigation;
- Administrative procedures requiring notification of the opening or results of the investigation to administrative authorities, notably in cases of competition law violations (leniency requests);
- Requests for cooperation with public prosecutors, searches, or judicial requisitions concerning facts that may involve offenses.

4.2. Governing Bodies and/or Management Boards

Governing bodies are informed during annual presentations of comprehensive data relating to the use of the alert system and the handling process, through the following indicators: number of alerts, number of alerts by geographic area, number of alerts resulting in sanctions or remediation measures, the nature of sanctions or remediation measures, average processing time, and, where applicable, analysis of the structural causes of these alerts.

To ensure independence and impartiality of the investigation, it is recommended that governing bodies not be involved in the conduct of the investigation and only be informed of

the results, where applicable, in their capacity as hierarchical managers.

Nevertheless, the collegial body handling alerts evaluates, for each investigation, whether or not it is necessary to involve governing bodies in the process, taking into account the hierarchical level of the person implicated and the seriousness of the alleged facts.

4.3. Employees, Employee Representatives, and Unions

The members of this working group note that communicating key information about the internal investigation process to employees and their representatives is a good practice that helps build their confidence in the company's ability to conduct such exercises rigorously.

For example, companies may implement:

- Annual or semi-annual communication to all employees on the number of alerts received, the number of alerts leading to the opening of an investigation, the number of investigations resulting in sanctions, sanction rate, and alert rate by subject;
- Specific presentations to employee representative bodies;
- Ad-hoc presentations at the request of trade unions;
- Communications such as videos or testimonial articles from whistleblowers, internal investigators, or even implicated persons;
- Communication and, where appropriate, discussions based on anonymized real-life case studies.

Employee representative bodies, however, should not be involved in the conduct of investigations, particularly in interviews.

5. Retention of Investigation Data

The retention of investigation data must comply with regulations relating to the protection of personal data (see Annex 1.2 GDPR for details).

The full investigation report and its annexes must be archived to meet legal obligations in the event of disciplinary or judicial proceedings. Archiving must be carried out using a system that ensures the confidentiality of the data.

The retention period for investigation data must take into account any statutory limitation periods that may apply to the misconduct identified.

SHEET 5: THE STATUS OF THE INTERNAL INVESTIGATOR

The strengthening of legislation governing internal reporting mechanisms in recent years has led to the improvement of related procedures and the democratization of their use. Consequently, the number of reports received has tended to increase steadily.

In this context, companies must implement robust internal investigation systems, relying in particular on professionals trained in the practice, some of whom dedicate themselves entirely to this mission. The professionalization of the role of internal investigator raises questions about their profile and their status.

There is currently no degree-awarding training program that regulates and guarantees the consistency and mastery of the practices, skills, and knowledge required to effectively perform the role of investigator. On the contrary, the backgrounds, profiles, and training of individuals currently holding positions as internal investigators are varied: ethics and compliance professionals, human resources, security, lawyers, auditors, etc.

Nevertheless, certain transversal skills and aptitudes appear necessary to carry out the role of internal investigator with confidence.

Without any claim to completeness, the internal investigator is expected to

- To be of integrity: the internal investigator must be recognized as having impeccable integrity, i.e., no known ethical or compliance breaches, honest, and trustworthy.
- To act with impartiality regarding the interests at stake: the internal investigator must remain objective and impartial.
- To demonstrate strong listening skills: practicing active listening, without judgment, with the necessary perspective and awareness of perceptual biases that may affect them.
- To show discernment, analytical and synthesis skills, in order to assess critical professional situations involving the interests of both the company and individuals.
- To respect the highest degree of confidentiality, as well as the fundamental principles of any investigation (presumption of innocence, adversarial process, proportionality).
- To demonstrate responsiveness in order to quickly resolve "sensitive" and sometimes high-risk situations.
- To conduct an investigation with authority and rigor, while demonstrating independence and critical thinking.
- To have a solid foundation of knowledge or a strong interest in legal, psychological, or financial topics.
- To demonstrate diplomacy, courtesy, and strong oral and interpersonal skills.

In light of the needs and resources of the company concerned, the company determines whether it is preferable to appoint permanent internal investigation teams or employees serving on an ad-hoc basis as internal investigators. In all cases, it is necessary to provide regular training for employees performing this role.

The training must in particular include:

- Legal knowledge and, where applicable, financial knowledge necessary for the proper performance of the role;
- Knowledge of the body of ethical and compliance procedures applicable to the company and, where relevant, to the different geographic areas in which the investigator may operate;
- Knowledge of how to conduct an interview, practice active listening, and possibly aspects of psychology.

To ensure fairness in the internal investigation process within the organization and to allow the professional to carry out their duties with confidence, it is recommended that their practice be strictly governed by a formalized body of documentation through a dedicated policy (see Section 2. Internal Investigation Policy), possibly supplemented, where appropriate, by an Investigator's Charter, whether or not annexed to the policy.

The Investigator's Charter may specify the rights and obligations to which the investigator is subject and may include best practices in the way interviews are conducted (see Fact Sheet 1: *Guiding Principles of an Internal Investigation and Conduct of an Interview*).

It is recommended that the investigator's assignments be formalized in a letter of engagement signed by a representative designated by the company's highest-ranking executive

The duties of the internal investigator involve functional characteristics that must enable the professional to:

- Act with full independence and be protected from any attempt at pressure or, where applicable, retaliation;
- Possess sufficient legitimacy to summon and conduct interviews with employees in high hierarchical positions;
- Hold a level of authority and influence sufficient to exercise responsibilities of guidance and control over all organizational processes of the company and the management lines associated with them;
- Benefit from enhanced confidentiality in the performance of their duties, without having to report the substance of investigations to their hierarchy.

In view of these requirements, it appears possible to attach internal investigation teams to the Ethics and Compliance Department, where it exists, or failing that, to the Legal, HR, Financial, Audit, Risk, or Security Departments, provided that they effectively benefit from the guarantees listed above.

1. Applicable Legal Framework (in Europe and in France)

Although this practical guide is not intended to provide a legal analysis of the legal framework applicable to internal investigations, it is useful to briefly recall its general principles. In the absence of dedicated texts, various legal contributions in the matter should be noted.

1.1. 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, transposed in France by Law No. 2022-401 of 21 March 2022 aimed at strengthening whistleblower protection, known as the “Waserman Law”

The directive and the Waserman Law require companies with more than 50 employees to establish an internal whistleblowing mechanism, which in practice may lead them to conduct internal investigations.

1.2. General Data Protection Regulation (“GDPR”)

The initiation and conduct of an investigation involve the processing of personal data as defined by the GDPR.

► Lawfulness of processing

Under Article 5 of the GDPR, personal data must be processed lawfully, fairly, and transparently, and collected for specified, explicit, and legitimate purposes. Data must be accurate, retained for a limited time, and relevant in relation to the purposes for which it is processed (principle of minimization).

The natural or legal person who determines the purposes and means of processing is the data controller and ensures compliance with Article 5 and subsequent provisions. In the context of an internal investigation, the data controller is the company, the legal entity on whose behalf the investigation is conducted.

Article 6 lists the conditions for lawful processing of personal data. Two legal bases may justify such processing in the context of an internal investigation depending on the circumstances:

- Compliance with a legal obligation, notably the employer’s duty of care, in line with the ruling of the French Cour de Cassation of 27 November 2019 (No. 18-10.551), which establishes an obligation for the employer to conduct an investigation whenever a case of harassment is reported by an employee.
- A legitimate interest such as “fraud prevention” (Recital 47 of the GDPR).

► Exercise of data subjects’ rights

Before the exercise of all data subject rights, the obligation to inform individuals of the existence of personal data processing is required under Articles 12, 13, and 14 of the GDPR. The right of access to such data is guaranteed by Article 15.

In the context of an internal investigation, it may be necessary to postpone informing the person(s) implicated by the report in order to adopt protective measures needed for the proper conduct of the investigation. This temporary exception is provided for by Article 14.5(b), where notification would “*seriously impair the achievement of the objectives*” of

the processing.

The right of access to data by each party must not infringe on the rights and freedoms of others, including other parties to the investigation, trade secrets, or intellectual property rights (Recital 63 of the GDPR).

► **Carrying out a DPIA**

On the basis of Article 35 of the GDPR, the CNIL requires a prior Data Protection Impact Assessment (AIPD in French) for processing operations aimed at managing alerts and workplace reports. A single DPIA may be conducted for the entire whistleblowing system provided that it is consistent and collects the same type of data¹.

At the European Union level, readers may refer to the guidelines published by the EDPB (formerly WP29)². While they do not explicitly mandate a DPIA for processing personal data in the context of an internal investigation, the potential for significant legal effects nonetheless warrants conducting a DPIA beforehand.

1.3. French Law and Case Law

Article L. 1222-1 of the French Labour Code establishes a general duty of loyalty binding both employer and employee.

► **Employer's duty of loyalty**

For the employer, this implies a prohibition against using subterfuge, tricks, or covert devices to entrap the employee.

However, the right to evidence may justify the use of materials infringing on privacy, provided such evidence is essential for the exercise of this right and that the infringement is proportionate to the intended purpose (Cass. soc., 30 September 2020, No. 19-12.058).

The French Court of Cassation, through consistent case law, considers that internal investigations are not subject to Article L. 1222-4 of the Labour Code, which requires prior employee information about monitoring systems used to collect data concerning them (Cass. soc., 17 March 2021, No. 18-25.597).

The Court of Cassation also affirms that an internal investigation must be conducted with both incriminating and exculpatory elements considered (Cass. soc., 9 February 2012, No. 10-26.123).

► **Employee's duty of loyalty**

The employee's duty of loyalty entails a duty of discretion. In the context of an internal investigation, this legal basis justifies the strict confidentiality required of all parties involved.

► **Principle of adversarial proceedings**

The Cour de Cassation considers that respect for the rights of defence and the principle of adversarial proceedings does not require, in the context of an internal investigation following a report of moral harassment, that the accused employee be given access to the file or the collected evidence, or that they be confronted with the colleagues who reported

¹ Sur ce point, voir les articles 50 à 53 de la Délibération de la CNIL n°2019-055 du 9 mai 2019

² Lignes directrices concernant l'analyse d'impact relative à la protection des données (AIPD) et la manière de déterminer si le traitement est « susceptible d'engendrer un risque élevé » aux fins du règlement (UE) 2016/679.

them, or even be heard, provided that any decision the employer may take — and its underlying evidence — can later be debated before the courts (Cass. soc., 29 June 2022, No. 20-22.220)

► **Safety obligation**

Under Article L4124-1 of the Labor Code, employers are required to take all necessary measures to ensure the safety and protect the physical and mental health of their employees. This safety obligation is an obligation of result from which employers cannot exempt themselves.

According to the Court of Cassation, an employer who initiates and conducts an internal investigation without respecting the principles of impartiality, confidentiality, and fairness, or who does so in a clumsy manner, is in breach of its safety obligation. (Cass. Soc., February 9, 2012, No. 10-26.123 and Cass. Soc., July 6, 2022, No. 21-13.631).

Similarly, the employer is obliged to promptly initiate an internal investigation after a report has been made. Delaying the opening of the investigation procedure constitutes a breach of the safety obligation. (Cass. soc., March 23, 2022, No. 20-23.272)

In the event of harassment, failure to conduct an investigation constitutes a breach of the employer's safety obligation and justifies the termination of the employment contract solely on the grounds of the employer's fault. (Cass. soc., November 27, 2019, No. 18-10.551 and CA Douai, Social Chamber, May 28, 2021, No. 1678/21).

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