

TECHNICAL COMMUNIQUÉ CT-09/2022

Regarding whistleblowing and the mechanisms to encourage the reporting of potential or actual breaches of Law 14/2017 and its developing provisions

Andorra la Vella, 21st November 2022

Article 91 of *Law 14/2017, of June 22, on the prevention and fight against money laundering and terrorist financing* (hereinafter, "*Law 14/2017*") requires UIFAND to establish the mechanisms to encourage the reporting of potential or actual infringements committed by a party under obligation of the provisions of the aforementioned Law and its developing provisions. In this sense, the aim of this Technical Communiqué is to develop the mechanisms and procedures for reporting through the corresponding form and, at the same time, to serve as a guide for reporting persons during the different stages of this process as well as its subsequent follow-up.

1. Specific procedures for the receipt of reports on breaches and their follow-up

Individuals who are aware of **situations or conducts committed within a party under obligation that they consider or are certain may constitute potential or actual breaches of any AML/CFT obligation** (hereinafter "reporting person" or "whistleblower") may report them to UIFAND by using the form provided for this purpose in the section [Publications/Forms](#) of the UIFAND website.

In the event that the whistleblowers are employees of the reported party under obligation, **it is advisable that, in the first instance, they report internally the facts that they believe may be the source of the infringement**, making use of the specific, independent and anonymous reporting channel that the party under obligation must have enabled in compliance with article 91.3 of *Law 14/2017*. However, the whistleblower may decide at any time, regardless of whether or not they have made use of this possibility, to report the facts directly to UIFAND.

In any case, **the aforementioned form must be submitted on paper or electronically, duly signed, to the following addresses, as appropriate:**

Physical address: Financial Intelligence Unit of Andorra -UIFAND-.
C/Dr. Vilanova 15-17, floor-4
AD500 Andorra la Vella

E-mail address: uifand@andorra.ad

In case the electronic form is chosen, in order to increase the security and confidentiality of the data processed, it will be necessary to protect the documentation provided with a password, which will have to be subsequently communicated by another e-mail or other means.

Content of the reporting of breaches

The form provided for this purpose specifies the fields that must be filled in. Therefore, **reportings will not be accepted if these minimum fields are not duly filled in.**

The report must contain, as a minimum, an **identification of the person** who is believed to have committed the potential or actual infringement and a **detailed and concise description of the facts** that are being reported, as well as a **justification of the reason why they are considered to constitute an infringement**. Additionally, in the event that the conduct is attributable to a specific person or group of persons and the reporting person knows their identity, the form provides for the possibility of identifying these persons.

Regarding the type of situations that can be reported, these must be likely to constitute a **potential or actual breach of any of the provisions of Law 14/2017 and its developing provisions**, the fulfilment of which corresponds to a party under obligation. Therefore, it is advisable to review the conducts classified as administrative offences in articles 71, 72 and 73 of the aforementioned Law before submitting a report.

In this regard, it is important to note that the following reports **will not be accepted**: (i) **generic or indeterminate** issues; (ii) that are **subject to legal proceedings**; (iii) that are **repetitions of information that has already been made public**; or (iv) that correspond to **labour disputes**. The expectation is that the report identifies, as far as possible, the provision or provisions of *Law 14/2017* or the regulations that develop it, which the reporting person believes or is certain are being infringed or have been infringed.

Finally, UIFAND **guarantees the confidentiality of the reporting person**, except in those cases where disclosure is required in the context of further investigations or subsequent legal proceedings.

Subsequent follow-up of the report

Once the report has been submitted to UIFAND, this Unit will proceed to analyse it carefully. In the event that no elements constituting a potential or actual infringement of *Law 14/2017* and its developing provisions are detected, the report will be dismissed. Otherwise, the analysis and investigation process will continue.

During this stage of analysis and investigation, **UIFAND may need to contact the reporting person and/or the reported party under obligation** in order to confirm certain information, obtain additional information or carry out other types of checks. In these cases, the form includes a section where the reporting person can indicate whether he/she considers that UIFAND should follow any instructions or take any precautions when making these contacts, in order to adequately protect the confidentiality of the reporting persons involved.

In any case, **UIFAND will inform the whistleblower of the course that will be given to the report with regard to:** (i) its filing; or (ii) in the event that the report follows its course, the subsequent transfer to the Public Prosecutor's Office, in case evidence of a criminal offence is found. Notifications of these circumstances are made as soon as they are known to UIFAND and via the email address provided on the form.¹

2. Protection of the people involved in the report

The reporting of a potential or actual breach of *Law 14/2017* and its developing **provisions is not considered a breach of any communication restriction** imposed by contract or by any other legal, regulatory or administrative provision, nor may it imply **any type of liability** for the reporting person the breach in relation to their actions or omissions within the scope of the report made.

In the event that the whistleblower is exposed to **threats, retaliation or hostile actions, or adverse or discriminatory employment actions derived from the formulation of the report**, such as dismissal, demotion in rank and/or responsibilities, salary reduction, negative references or imposition of disciplinary measures, among others, he/she may submit, in accordance with article 91. 4 of *Law 14/2017*, a communication to the UIFAND,² which will analyse it, and **in the case of appreciating evidence or the existence of a criminal offence, will report to the Public Prosecutor's Office.**

With regard to the identity and data relating to the **party under obligation and/or the reported individuals**, these will be subject to the **same confidentiality measures as the individuals reporting them**. Likewise, in the event that it is established that the reported facts constitute an infringement, an administrative sanctioning procedure will be initiated in accordance with the terms established in the second section of the tenth chapter of *Law 14/2017* and, therefore, with all the **guarantees provided by the aforementioned law**.

UIFAND will not be able to provide legal advice to the persons involved in the report.

¹ *In the event of having to follow any instructions or take any precautions when making these contacts, the form includes a section where the reporting person can indicate these circumstances.*

² *This notification is made by submitting to UIFAND the same form as the one used to file the report.*

3. Confidentiality

The data processed at UIFAND are subject to the strictest confidentiality by virtue of Article 60 of *Law 14/2017*, whereby the members of UIFAND and its administrative staff are subject to confidentiality in the employment sphere and to professional confidentiality, both during the duration of their relationship with UIFAND and once this relationship has terminated. This data includes the identity of the reporting and reported individuals, even in those cases in which, although they are not explicitly mentioned, they can be directly or indirectly inferred.

Nevertheless, the data may be disclosed in those cases in which it is required in the context of further enquiries or subsequent legal proceedings and, in the event that the reported infringement may constitute a criminal offence, the corresponding transfer will be made to the Public Prosecutor's Office. These circumstances, if they occur, will be notified to the person making the report via the e-mail address provided in the form, taking into account the instructions and considerations established in the form for the reporting person.

4. Protection of personal data

The processing of the personal data, both of the reporting and of reported individuals, contained in the report, as well as those obtained in the subsequent process, if necessary, of analysis and investigation of the facts, **will be carried out in compliance with the provisions and principles of *Law 29/2021, of 28 October, on the protection of personal data***.

The establishment of these reporting procedures is intended to strengthen and increase the mechanisms for preventing money laundering and the financing of terrorism. In this regard, the cooperation of all those who use them is appreciated.

Carles FIÑANA PIFARRÉ
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