



## Procedure for detecting and following up suspected cases of fraud in fund management

<b>Document</b>	Procedure for detecting and following up suspected cases of fraud in fund management
<b>Description</b>	Establishes the actions that ICN2 must take to investigate a complaint or suspected case of fraud
<b>Creation date</b>	October 2023
<b>Revision date</b>	To be determined
<b>Purpose</b>	Define the procedure for investigating and following up complaints of suspected cases of fraud
<b>Classification</b>	Internal document

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## 1. Scope

The scope of application of this Procedure is as follows:

**Legal scope:** This Procedure is applicable to ICN2 and to the positions and employees therein.

**Personnel scope:** This Procedure is applicable to all levels of ICN2, including the governing and administrative bodies, the control bodies and all personnel, regardless of the position or function they hold or their status, including the personnel of other entities attached to ICN2 (hereinafter jointly referred to as "employees" or "personnel").

**Objective scope:** This Procedure will be applicable to the management and monitoring of European Union funds aimed at implementing the Recovery, Transformation and Resilience Plan (RTRP), as well as any other future subsidies received by ICN2 that are so required by law.

**Relational scope:** The scope of application of this Procedure will be extended, as far as possible, to RTRP contractors and subcontractors or bodies that manage subsidies or other types of grant. Should this not be possible, tenders will be limited to subjects that have similar procedures, or standards of conduct, preventive measures and control systems will be contractually imposed.

**Geographical scope:** This Procedure will apply to public and private relations with regard to the RTRP or others established by ICN2 in any geographical area, whether local, national or international.

In all matters not provided for in this Procedure, the Procedure for managing information received will be applied as a supplement. **This is enclosed as Annex II.**

## 2. Procedure for detecting and following up suspected cases of fraud in fund management

This defines the actions to be carried out by ICN2 to detect, investigate and follow up on suspected cases of fraud as provided for in Article 6.5.g) of Ministerial Order HFP 1030/2021 of 29 September.

The aim is to detect, investigate and follow up on suspected cases of fraud when there is, at the very least, a well-founded suspicion of a situation of fraud related to the management of European Union funds of the RTRP or future subsidies that require this by law, by a natural or legal person, including contractors or subcontractors of the European Union funds and future ICN2 funds that so stipulate in their regulations, involving any of their employees or third parties (hereinafter all these being referred to as **Beneficiaries**).

A well-founded suspicion of fraud will be considered to exist when this conclusion is reached after the corresponding investigation has been carried out. This conclusion must be set out in writing in the so-called "Conclusions report".

This Procedure is addressed to the body in charge of the Anti-Fraud Measures Plan (PMA) which, in the case of ICN2, is the control committee created for this purpose. Subsidiarily, it is addressed to any ICN2 member who has been given the authority to investigate suspected cases of fraud in fund management, such as the Manager of the Internal Information System.

## 2.1. Initiation of actions:

2.1.1. ICN2 will have the following general functions in this Procedure:

- To monitor the management of EU or other funds by the Beneficiaries and, if necessary, to detect possible fraud in accordance with the provisions of this Procedure.
- When a suspected case of fraud is detected, to apply this breach investigation Procedure, which will be coordinated and complemented by **ICN2's Procedure for managing information received**.
- To request any assistance that may be necessary from the departments responsible for managing European Union RTRP or other funds or external funds, if necessary.
- To file and store all the information gathered whilst following up on a suspected case of fraud.

2.1.2. Initiation of the Procedure:

This Procedure will be initiated once ICN2 detects, through any internal or external source (such as internal postboxes, **whistleblower** channel or follow-up reviews) that the Beneficiary is in a situation of possible fraud.

ICN2 may consider the Beneficiary to be in a situation of possible fraud in the following cases:

- When communications are received reporting the possible fraudulent use of European Union or other funds via the mechanisms for reporting suspected fraud established by ICN2, such as the **whistleblower** channel, internal postboxes or the hierarchical superior of the reporting person.

- When facts are published in the media that could be related to the fraudulent use of European Union or other funds.
- When the occurrence is detected of any of the situations of possible fraud listed in Annex I of this Procedure (red flags).

The detection of a possible fraud under the terms described in this Article, or a well-founded suspicion thereof, will result in ICN2 applying this Procedure.

## **2.2. Investigation process:**

2.2.1. In the event that a possible fraud is detected, or the well-founded suspicion thereof (by means of the aforementioned "Conclusions report"), ICN2 must:

- Immediately suspend the procedure, carry out the investigation in accordance with ICN2's procedure for managing information received and, where appropriate, notify the authorities concerned and the bodies involved in carrying out the actions of this circumstance as soon as possible, as well as review all projects, sub-projects or lines of action that may have been exposed;
- Report the facts that have occurred and the measures adopted to the decision-making body, or to the executing body or any other bodies that have entrusted it with carrying out the actions or that have granted it the funds. In this last case, it will be the latter that will report the facts to the decision-making body or other bodies, reporting the matter to the Responsible Authority or its equivalent, which may request any additional information it deems appropriate for its monitoring and notification to the Control Authority or its equivalent;
- Report, if necessary, the facts to the competent public authorities, to the Spanish National Anti-Fraud Coordination Service (SNCA) for their assessment and possible communication to the European Anti-Fraud Office (OLAF) or the Anti-Fraud Office of Catalonia;
- Initiate an internal procedure to determine responsibilities or initiate disciplinary proceedings, always in accordance with the respective labour law regulations that must be observed, in accordance with that established in ICN2's Procedure for managing information received;
- Report the facts, if necessary, to the Public Prosecutor's Office, when applicable.
- Evaluate the incidence of possible fraud and its classification as systemic or one-off and, in any case, withdraw the projects or the part of the projects affected by the fraud and financed or to be financed by the Recovery and Resilience Mechanism (MRR) or others.
- In addition to all the above, ICN2 must also consider the adoption of corrective measures to improve the process in which the fraud has occurred, which will be

included in its final Conclusions report which must be issued in order to confirm all the actions taken in the application of this Procedure.

### 2.2.2. Managing the documentation from the investigative procedure.

All documents and elements (evidence of suspected fraud, reports, etc.) originating during the process of following up on suspected cases of fraud must be filed, as established in the Procedure for managing information received.

ICN2 will be responsible for compiling, managing, filing and safeguarding the documentation generated in compliance with the provisions of this Procedure.

ICN2 must prepare an archive to store all the documents and elements relating to each of the procedures it has carried out to follow up suspected cases of fraud.

The documentation will only be kept in the information systems for as long as necessary and as is proportionate in order to comply with current legislation and in accordance with the regulations established in ICN2 regarding the conservation of documentation, in order to provide evidence of compliance with the PMA.

### 2.2.3. Following up actions.

ICN2 will follow up on procedures that are finalised in order to be able, if necessary, to supervise the execution of disciplinary sanctions or corrective measures regarding the management system for compliance with the RTRP or other measures implemented at ICN2 that it is recommended to apply.

In this regard, and when necessary, ICN2 may be assisted by other members of the ICN2 structure or by the Human Resources department to supervise the enforcement of sanctions or corrective measures.

ICN2 will take the necessary measures to process the legally established procedures in order to demand accountability from whoever is responsible, as well as the repayment of the amounts of the RTRP or other funds unduly received, if applicable.

To this end, it will be necessary to report the case to the competent public authorities, to the Spanish National Anti-Fraud Coordination Service and, ultimately, to the European Anti-Fraud Office, as well as to the Public Prosecutor's Office and the competent courts, if appropriate.

Reporting measures allow the fraud to be investigated and to fully recover the fraudulently spent amounts.

When appropriate, ICN2 will carry out the necessary follow-up tasks to ensure any

possible compensation is awarded to ICN2 or that the funds fraudulently spent have been recovered; and it will coordinate with the competent authorities to be able to follow up on the case in question and promote it.

### 3. History, approval and entry into force

#### History:

The following table reflects the different versions of the Procedure that have been drawn up, as well as the date and subsequent modifications that each version of the document may have undergone:

VERSION	AUTHOR	DATE	CHANGES
1.0	ICN2	October 2023	Initial version

#### Approval and entry into force:

This Procedure will be approved by the governing body of ICN2, the date of approval being the date as from which the document will take effect.

### 4. Follow-up, continuous adaptation and amendment of the Procedure

#### Follow-up and continuous adaptation:

Periodic revisions of the content of the Procedure will be established to ensure its continuous adaptation to the reality of ICN2, any legislative or jurisprudential changes, etc. Likewise, its use will be monitored.

#### Amendments:

ICN2 may amend the Procedure on its own initiative and/or on a proposal made by any addressee thereof. In any case, modifications to the Procedure will be proposed when the following circumstances arise: (i) When serious breaches of the Procedure become apparent; (ii) When there are significant changes to ICN2's control structure or to its activity according to the competences that may be attributed to it; and (iii) When there are legal or jurisprudential modifications that warrant such amendment.

## ANNEX I - LIST OF POSSIBLE FRAUDS (RED FLAGS)

SUBSIDIES
The Beneficiary does not provide information or provides incomplete information on its bank accounts
The Beneficiary omits the monitoring requirements for receiving EU funds
Detection of false invoices or bank accounts that are not owned by the Beneficiary
Insufficient dissemination of the rules and of the tender for the subsidy
Insufficient description of the requirements to be fulfilled by the beneficiaries of a subsidy or of the scales to evaluate bids
Failure to comply with the time limits established for the submission of bids
Excess in the co-financing of projects or lack of justification for this
Detection of co-financing in the same project not reported by the Beneficiary
Failure to comply with the obligation to retain the documents justifying the subsidy
Detection of an inappropriate or strange action in the electronic file management system
The Beneficiary refuses to promise to comply with the regulatory requirements for receiving EU funds
The Beneficiary refuses to provide documentation proving that no fraudulent use is being made of the EU funds received
The Beneficiary is unaware of anti-corruption and/or money laundering legislation or lacks an anti-corruption and/or money laundering programme

The Beneficiary refuses to collaborate in the Procedure to follow up suspected cases and/or in the subsequent investigation of the facts
The Beneficiary introduces obstacles to obtaining final approvals for the allocation of EU funds
The Beneficiary refuses to detail or clearly define in writing the services it offers
The Beneficiary has not provided the required information or has provided incomplete, inaccurate or false information
The Beneficiary makes donations to public bodies, political parties or entities linked to these
The Beneficiary gives gifts to civil servants or entities linked to these
The Beneficiary uses people with minimal or insufficient skills, education or experience
The Beneficiary contracts third parties to carry out tasks that could have been carried out directly by the Beneficiary or that do not require any special knowledge or skills
The Beneficiary uses suspicious or unusual ID documents
The Beneficiary has provided information that differs from the information detected or expected
The Beneficiary uses false P.O. Boxes or addresses
<b>TENDERS</b>
Suspicious regarding the drafting of technical or administrative clauses in tenders in favour of a bidder
Tender specifications that are not sufficiently clear regarding the award criteria or that are discriminatory or unrelated to finding the best value for money
Tender specifications that contain more restrictive or more general prescriptions than in previous similar calls

Submission of a single bid or an abnormally low number of bidders for any type of tender
Declaring a tender void which is reconvened when valid bids are submitted according to the specifications
Insufficient dissemination of the call for tenders or failure to comply with the deadline for receiving bids
Complaints from other bidders (review of their complaints)
Choosing less competitive tender procedures without justified cause
Agreements between bidders for the submission of bids (for example, several bidders from the same group of companies)
Subcontracting by the successful bidder to companies that have participated in the same tender
Winning bids with prices very different from market prices
Observation of bids presented with similarities that might suggest they have been drawn up by the same person
Repeated request for information on a procedure by an ICN2 employee who does not have the relevant authority
Concealment of a previous employment or family relationship between an ICN2 employee and bidder
Failure to submit the Declaration of Absence of Conflict of Interest (DACI) for those workers obliged to do so
Acceptance of abnormally low bids not justified by the bidder
Exclusion of bids for dubious or unjustified reasons

Receiving complaints or claims from other bidders
Awarding several minor tenders to the same bidder (splitting the tender)
Inconsistency between the person signing the tender and the successful bidder
Lack of a tender or call for tender
Failure to publicise the fact that the tender is being held
Non-compliance of the tender's provisions or unjustified modifications to the tender
Detection of non-permitted subcontracting or payments higher than the value of the tender
Detection of false or misrepresented documentation in the tender process

## 5.ANEX II -

### Procedure for managing information received

<b>Document</b>	Procedure for managing information received
<b>Description</b>	Implementation of the management of information received via the Internal Information System (Whistleblower Channel)
<b>Creation date</b>	April 2023
<b>Purpose</b>	Establish the rules and regulations for the management of communications received via the Internal Information System (Whistleblower Channel)
<b>Classification</b>	Internal document

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## I. OBJECT, SCOPE AND GUIDING PRINCIPLES

### 1. Object and purpose

This document contains the procedure and rules that must be applied at the Catalan Institute of Nanoscience and Nanotechnology (hereinafter, ICN2) when any of the subjects to whom it is addressed submits a complaint to the institution through the Internal Information System (Whistleblower Channel) that has been set up by ICN2. This Procedure will be managed by the person designated as the Manager of the system (hereinafter, the Manager) by the ICN2 Board of Trustees as the governing body, as defined in the Internal Information System Management Policy.

Respect for, observance and application of this Procedure will allow ICN2 to (i) guarantee the obligation, if applicable, to report possible risks and non-compliance to the ICN2 Whistleblower Channel Manager and (ii) adapt its activity to current regulations, guarantee compliance with its internal regulations and reduce the risk, if applicable, of criminal or unlawful conduct being committed.

In any case, the sole purpose of the implementation of the procedure established herein will be to determine the facts, in order to then be able to consider the imposition of possible disciplinary sanctions by the institution or the exercise of any legal actions found to be pertinent.

### 2. Scope of application and obligation

#### Objective scope:

This Procedure will be applicable to actions or omissions occurring within the scope of ICN2's activities and without any geographical limitation.

Likewise, this Procedure regulates the investigation phase of the procedure to be followed for all complaints received by the ICN2 Whistleblower Channel, i.e. it establishes the initial steps to be followed in order to verify, on a *prima facie* but sufficient basis, whether the facts reported could constitute any type of breach of the aforementioned regulations that must be observed by the institution.

Once the investigation phase has been completed, as detailed below, the Manager may terminate the proceedings or decide to initiate the relevant investigation.

#### Subjective scope:

This Procedure will be applicable to all actions or omissions carried out by those who, in any way, provide services in an employment or professional manner to ICN2, i.e. participants or members of the Board of Trustees, management or supervision of the institution, including non-executive members, employees and regular external collaborators, as well as any person who acts on behalf or for the benefit of the institution and third parties (the latter in their capacity as

whistleblowers). The Procedure will also be applicable to (i) all of them, whether they are the reporting person, the person concerned or witness, and (ii) to the body responsible for receiving and/or processing the complaints that are received via the Whistleblower Channel, i.e. the Manager.

In addition, this Procedure will also regulate, in all that is applicable to them, any communications made via the Whistleblower Channel by third parties unrelated to ICN2.

### **Obligation:**

Respecting the Procedure is a labour or contractual obligation for everyone and failure to comply may therefore result in disciplinary sanctions in accordance with the provisions of the labour regulations governing ICN2 (e.g. the applicable Collective Bargaining Agreement), as well as the corresponding contractual regulations.

Any addressee of this Procedure (with the exception of third parties) is obliged to report any incident of which they are aware to the Manager and by any of the means contained in the Internal Information System Management Policy.

### **3. Legal regime**

The management of information received through the Whistleblower Channel will be governed by this Procedure, which will be complemented by the Internal Information System Management Policy. Likewise, any regulations will be observed that are issued by the authorities or administrations in relation to whistleblower channels or any other regulations that regulate aspects related to such channels and the management of the information received (e.g. laws regulating data protection or the prevention of money laundering and the financing of terrorism and, significantly, all those regulating the protection of fundamental rights).

### **4. Guiding principles**

This Procedure will be guided by the same principles of action contained in ICN2's Internal Information System Management Policy.

## **II. RECEIPT OF COMPLAINTS REPORTED**

### **5. Reception of the complaint**

Once the Manager has received the complaint and has sent proof of receipt thereof within a period of no more than seven (7) calendar days of receipt, he/she will proceed to carry out the steps set out in the following sections.

### **6. Creation of the file, subfile and chance discoveries**

The Manager, as the person responsible for managing and following up the complaint received, will create an individual file containing the information received and the proof of receipt and will assign it a number for identification and follow-up (e.g. File 1.0/2023).

In the event that various communications are received regarding the same or related facts, sub-files may be created at the discretion of the Manager, for better identification (e.g. File 1.a/2023).

When, as a result of the investigation that may be initiated, as detailed below, knowledge comes to light of a chance discovery, i.e. one that is not related to the initial complaint but which may also involve an incident eligible for reporting via the Whistleblower Channel, this will be assigned a new file number (e.g. File 2.0/2023) and will be processed in accordance with the provisions of this Procedure as a complaint.

The files may be in physical or digital format and, in both cases, they must be stored with sufficient security measures to prevent access by unauthorised subjects (e.g. password-protected cabinets or files with passwords).

Such files will contain, in addition to the ID number of the file and the complaint received, all the investigative work the Manager has been able to carry out.

## **7. Registering communications**

ICN2 will keep a record of all communications received and internal investigations carried out, which will be stored for as long as is necessary and proportionate in order to comply with this Procedure, thereby complying with the applicable regulations on data protection and with the confidentiality thereof. This register will not be public and it will only be possible to access all or part of the content of this register upon justified request from the competent judicial authority, by means of interlocutory proceedings, or as part of judicial proceedings and under the supervision of the latter.

Consequently, the following rules will be contemplated for the correct safeguarding of the communications received:

- When the complaint is made in written form, it will be duly kept in the investigating file.
- When the complaint is made by means of a meeting with the Manager, the verbal complaint will be documented in the form of a complete and accurate record of the conversation held.

In any case, the reporting person will be offered the possibility to verify, rectify and accept the transcription of the conversation or meeting by signing it. The minutes will be drawn up by the Manager.

## **8. Analysis and preliminary conclusion regarding the complaint received**

All complaints received will be verified and therefore all of them will be subject to preliminary investigation. To this end, the Manager will evaluate the complaint received in order to determine:

- a) Whether it meets all the requirements established in the Internal Information System Management Policy as basic information (if not, these may be rectified);
- b) The suitability of the complaint in order to determine whether the facts that are the subject of the complaint fall within the scope of this Procedure;
- c) The relevance and completeness of the information transmitted. Prospective investigations are prohibited that do not provide sufficient evidence that the following has been committed: an offence, a serious or very serious administrative breach or an infringement of the European regulations included in the Policy (Art. 1.2);
- d) Credibility of the reporting person;
- e) Whether the reported facts constitute, in addition, a breach of a legal provision of an internal ICN2 regulation.

Once the above evaluation has been carried out, the Manager, by means of a report drawn up for this purpose, will take one of the following decisions:

- a) Not to admit the complaint received and close the file, when the reported facts do not involve any of those provided for in Art. 1.2 of the Policy (lack of suitability of the complaint). In such cases, the Manager, when advisable, may forward the complaint received to any other ICN2 department which may deal with the reporting person's complaint (e.g. in the case of a grievance or recommendation);
- b) Admit the complaint received and then close the file when the facts reported are not sufficiently relevant, or when it is not possible to obtain sufficient details, or when the reporting person lacks credibility;
- c) Admit the complaint received and agree to initiate the investigative procedure.

The Manager will take the aforementioned decision and will always provide sufficient reasons for the decision taken.

Should the Manager receive a large number of complaints in a short period of time, he/she must prioritise the management of the most relevant ones. Those complaints that may require precautionary measures to be adopted, that may involve criminal matters, or that may cause serious damage to the reputation of ICN2 will be considered as more relevant.

## **9. Precautionary measures and preventive actions**

### Precautionary measures:

When the complaint received by the Manager is admitted and, as a result of the above preliminary analysis, it is concluded that (i) the indications regarding the incident reported are sufficiently solid and (ii) a delay in the procedure established herein could render the final

decision adopted inoperable or useless, the Manager may adopt precautionary measures until the investigative procedure has been completed.

The purpose of these measures will be to put an immediate end to any possible breach of the law or internal regulations that may be being committed and to protect any possible proof of the facts reported and it must be ensured that such measures in no way entail any harm or detriment to the parties involved regarding their working or contractual conditions. In addition, the precautionary measures chosen will always be the least burdensome possible in terms of the aims pursued.

#### Preventive actions:

The Manager may agree to keep any document or evidence that may be necessary for the smooth running of the investigation initiated and which may be at risk of being altered or destroyed.

In the two situations provided for herein, the decision adopted will be justified by means of a report drawn up for this purpose and the maximum duration of the measure will be established. The decision taken will be notified to the parties affected by it and in no case may it affect their fundamental rights and guarantees.

### **10. Information for the reporting person**

The Manager must inform the reporting person within a reasonable period of time, unless the latter waives this (the option of the reporting person identifying him/herself but declaring that he/she must not be contacted may be considered), of the admittance or rejection of the complaint, as well as the reasons for this decision; of the state of progress of the procedure; of the final decision taken; as well as other additional measures that may be taken as a result of the complaint received (e.g. Precautionary measures or referral to another channel of the fact reported because it is a fact that should not be reported via the Whistleblower Channel).

In this way, the Manager will seek to generate confidence in the internal Whistleblower Channel, this being the preferred channel of use at ICN2 as opposed to external whistleblower channels. This will also prevent the generation of new complaints or unnecessary public communications. Reporting persons may also address their complaints to the aforementioned external whistleblower channels: to the Independent Authority for the Protection of Whistleblowers, i.e. the Anti-Fraud Office of Catalonia, or to any other authority competent to receive complaints, both at national and European level.

A period of three (3) months from the receipt of the complaint will not be exceeded in order to complete the investigation and provide the reporting person with a response regarding the conclusion of the investigative procedure, without prejudice to the periodic information that will be provided to him/her as described above.

If no proof of receipt has been sent, these three (3) months will be counted after seven (7) calendar days following receipt of the complaint. The exception provided for in Section 12 regarding the three-month period will be taken into account.

### **III. INVESTIGATION**

#### **11. Establishing the steps to be followed**

The Manager will be responsible for initiating and carrying out the internal investigation in the event that, in accordance with the provisions of Section 8, it has been agreed to admit the complaint and initiate the investigative procedure. To this end, the Manager will plan his/her actions in accordance with the following principles:

- He/she will ensure respect for the rights and obligations of the reporting person and the person concerned, as well as for the fundamental rights recognised by law for all persons involved in the investigation;
- Depending on the nature of the facts and the persons concerned, he/she may decide to carry out the investigation him/herself, or with any advice that may be necessary (in such cases the parties involved will be informed of the fact that the advisor has been contracted by ICN2). Likewise, he/she may also decide whether it is appropriate to request the collaboration of technical experts in certain matters (e.g. lawyers, private detectives, notaries, etc.);
- In carrying out the investigation, only those investigative measures will be adopted that are useful, necessary and suitable for the purposes of the investigation and that do not cause greater harm than that which the intention is to avoid;
- He/she will identify the legislation, policy, procedure or internal regulations affected, as well as the reputational, financial or legal risks that could arise from the incident;
- He/she will identify the information and documentation relevant to the investigation, always respecting the fundamental rights of the parties involved;
- He/she will request, if necessary, all the information that may be of interest in relation to the contractual or employment relationship at ICN2 of the person concerned (history, possible previous contingencies, etc.).

#### **12. Implementation and documentation of the investigative procedure**

The investigation will be carried out in accordance with the above parameters and will be recorded in the file for the investigation, the natural order being as follows (without prejudice to any changes that may be made depending on the nature of the investigation in question):

- a) Once the decision has been taken to initiate the internal investigation phase, its objective will be to clarify the facts reported, identify those possibly responsible for them and gather the necessary evidence to justify the final decision adopted;
- b) A plan will be established for the investigation, limiting the scope of action, in which the following may be carried out, these always being legally valid and lawful actions:

- Holding of an interview with the reporting person, in which case he/she must be informed of his/her rights and obligations under this Procedure;
- Holding of an interview with the person concerned, in which case he/she must be informed, prior to the interview, of the acts attributed to him/her and of his/her rights under this Procedure;
- Holding of interviews with witnesses or third parties who may help to clarify the facts under investigation, in which case they will be warned of their obligation to tell the truth and the need for them to sign their statements. Should they oppose this, the interviewer will sign the record of the interview, leaving a note of this. These subjects will also be informed of their rights under this Procedure and of their obligation to keep the investigation confidential;
- Examination of documentation that may help to clarify the facts under investigation. The obtaining of the documentation will always be respectful of the fundamental rights of the parties affected by the investigation (e.g. Barbuлесcu Test II);
- Analysis of the evidence and conclusion of the file for the investigation. The Manager, once the evidence obtained through the investigation has been analysed, must decide whether or not, in his/her impartial opinion, he/she considers that the facts reported have occurred (he/she will objectify the facts), as well as whether the person responsible has been verified.

In this respect, all ICN2 members will be obliged to actively collaborate with the investigation of the facts reported when required to do so.

- c) The file created in accordance with Section 6 will be used to store documentary evidence of any investigative measures carried out by the Manager as part of this Procedure, such as:
- Interviews carried out (e.g. The minutes drawn up for this purpose signed by the person interviewed and by the Manager);
  - Questions asked (e.g. Content of the questions and signed by their author);
  - Documentation obtained (e.g. e-mails, minutes, various documents, etc.);
  - Should it be essential in order to clarify the facts, the adoption of surveillance measures such as detectives, IT resources, telematic media, etc.;
  - External advice that may have been requested (e.g. A legal consultancy);
  - Any investigative proceedings carried out by the Manager as part of this Procedure.
- d) The investigator will use whatever time is necessary to properly complete the investigation initiated, without exceeding 3 months from the receipt of the complaint. Exceptionally, and depending on the specific circumstances of the case and when a case is particularly complex, the Manager may extend the investigation period for a further three (3) months. This decision must be recorded by means of an official report drawn up for this purpose and the reasons must be given.
- The case will be considered as particularly complex when, among other things, it involves several reporting persons or persons concerned, may have a serious economic or reputational impact on ICN2 or requires reports to be produced by technical experts.

The obtaining of this evidence will always and in any case be governed by criteria of proportionality, reasonableness and suitability, at all times respecting the rights to privacy and honour of the person concerned and other fundamental rights.

### **13. Communication to the person concerned**

Prior to conducting the interview with the person concerned, the Manager will contact him/her and inform him/her about:

- a) The obligation of the Manager to investigate the facts reported and his/her status as a person concerned;
- b) The facts attributed to him/her, briefly, as well as the most important steps that will take place within the investigative procedure.

This information will be passed on to the person concerned by means of a face-to-face interview or telephone call and also by e-mail.

Should it not be possible to notify this person or if no response is obtained from the person concerned, this Procedure will continue, with the aforementioned circumstance being recorded. In no case will the identity of the reporting person or the communication received be passed on to any person concerned or third party.

The information to the person concerned will be provided in the time and manner deemed appropriate (including at the hearing, when it is considered there is a risk of concealment, destruction or alteration of evidence) to ensure the investigation is duly completed but without exceeding the maximum period of three (3) months, with the exception provided for in the previous section.

### **14. Rights of the person concerned to be observed**

From the time when [the Manager](#) makes the decision to initiate the investigative process, the person concerned will be considered as such and, as a consequence, will be entitled to the following rights, of which he/she will be duly informed at the time it is deemed appropriate in order to ensure the investigation is duly carried out:

- a) To be succinctly informed, prior to the interview mentioned in the previous points, of the facts attributed to him/her and which are being investigated. In the event that an interview is held, the person concerned will be informed of the possibility of this being recorded in the minutes, which he/she will have to sign once the interview has been completed and reviewed. Should the person concerned refuse to sign the minutes, the other persons attending the interview will sign them;
- b) To have access to the preliminary conclusion of the investigation file once it has been completed and to exercise his/her right to a hearing;
- c) To have the right to collaborate with the investigation or to reject it, without being obliged in any way to make a statement or to declare him/herself responsible for the fact under investigation;

- d) To have the right to be assisted by a lawyer of his/her choice during the entire investigation phase and/or by a workers' representative or a third party of his/her choice.

Should the person concerned waive any of these rights, this will be recorded in a report drawn up for this purpose and this Procedure will continue.

## 15. Hearing procedure

Once the investigation file has been completed, the Manager will inform the person concerned of the preliminary conclusion prior to concluding the investigation.

The latter will have the right to:

- Contradict, in other words, he/she may have access to the preliminary conclusions of the file and formulate any allegations he/she deems appropriate, as well as to propose the evidence that he/she deems appropriate in his/her defence. Should such evidence entail a specific cost, this will be met by the person concerned;
- In any case, he/she will be heard by the Manager and his/her right of defence will be safeguarded;
- When it is necessary to access e-mails from the corporate account of the person concerned or his/her professional computer, the latter may, even if the request comes from him/herself, be present when this is accessed and may also request the presence of a workers' representative or another ICN2 employee;
- In any case, the investigation file will be processed respecting the right to honour and the presumption of innocence of the person concerned, his/her reputation, as well as his/her right to privacy and defence;
- Opt for the same rights as those set out in the Internal Information System Management Policy for the reporting person;
- Have his/her identity protected while the investigation is underway at ICN2 and especially when it is decided to close the investigation file without further action. In those cases in which it is possible to suspect that the Manager has received a false accusation, the utmost precautions will be taken to protect the right to honour and privacy of the person concerned;
- Be informed, immediately and in writing, of the decisions taken in accordance with Section 19 of this Procedure.

In any case, ICN2 will respect the fundamental rights and guarantees that may be legally recognised for the person concerned.

## 16. Conclusions

Once the investigation has been completed, the Manager must present the results obtained in a final Conclusions report. This report must include:

- The facts that were reported, the place and circumstances in which, if applicable, they occurred;

- The persons involved therein;
- The investigative actions carried out and the person/s responsible for these, if applicable;
- Evaluation of the evidence found;
- Conclusion. This may be as follows:
  - a) There is sufficient evidence to support the fact reported. In this case, the legal precept or internal regulation breached will be identified and the continuation of the Procedure will be proposed in order to assess whether, if appropriate, a sanction, the exercise of actions and/or a measure to improve ICN2 processes should be recommended;
  - b) The facts reported do not exist, when the investigation leads to the conclusion that they have not been committed, or when the evidence obtained is not sufficiently solid or it has not been possible to identify the person responsible. In this case, the procedure will be closed without prejudice to the possibility of proposing improvement measures for ICN2 processes.

In both cases, the conclusion reached will be justified by means of the report drawn up for this purpose or by means of the Conclusions report.

- If necessary, a proposal to consider imposing a disciplinary sanction for the employee in question, as stipulated in point 22.
- If necessary, a proposal to review or terminate a contract when the breach affects persons or entities that are not ICN2 employees but have commercial or professional relations with ICN2;
- In any case, the prevention system in which the irregularity has occurred will be assessed, as well as proposals for its improvement, if necessary. If possible, the reason for the breach will be collected so that corrective measures can be applied.
- Should the Manager conclude that there is sufficient evidence of a criminal offence at ICN2, he/she will inform the Board of Trustees of the institution so that it can proceed to notify the competent Public Prosecutor's Office of this circumstance. Beforehand, and as soon as possible, a reasoned report must be obtained on, if applicable, the effective existence of indications of criminal offence in ICN2 processes.
- Should the facts affect the financial interests of the European Union, the European Public Prosecutor's Office will be notified.

## 17. Incompatibility

Should the complaint directly or indirectly affect the Manager or any of the body's members, the latter must withdraw from the investigative procedure and make this circumstance known either to the General Management or to the other members in charge, depending on whether the body is made up of one or various people.

Consequently:

- When the complaint is made against the Manager and this body is made up of one person, ICN2 must appoint a new Manager to carry out the relevant investigation, which will also be subject to this Procedure;
- When the complaint is made against a member of a group Manager body, a substitute will be appointed from among its members to take on the investigative tasks in substitution of the incompatible person, without affecting the rest of the members.

When this situation of incompatibility with the Manager arises, the fact that the latter does not abstain from his/her duties will constitute a very serious breach of this Procedure.

#### **IV. END OF THE INVESTIGATIVE PROCEDURE**

##### **18. Follow-up of the case**

The Manager will follow up on the procedures completed in order to be able, if necessary, to supervise the implementation of any disciplinary sanctions or corrective measures regarding ICN2 processes that are recommended, provided they have been adopted by the institution.

In this respect, and when necessary, the Manager may be assisted by other members of the ICN2 structure to verify that sanctions or corrective measures are implemented. ICN2 must ensure that the sanctions or corrective measures proposed and approved are implemented.

The investigative processes carried out by the Manager will be duly reported to the General Management and the Board of Trustees when necessary or by means of a periodic report.

##### **19. Sanctions**

According to the previous section, and irrespective of any legal actions that may be taken by the affected party and/or ICN2 against the person concerned regarding the facts investigated for contravening legal or internal regulations, ICN2 may impose the sanctions that are provided for in the disciplinary regime of the labour legislation in force at any given time (e.g. Collective Bargaining Agreement), as well as in the rest of the applicable labour legislation, when the existence of a breach is confirmed.

The decision regarding potential disciplinary measures will be consensual and agreed by the persons authorised for these tasks at ICN2.

Disciplinary sanctions may also be imposed for any conduct that violates the measures established to guarantee the confidentiality of the Whistleblower Channel, such as attempting to discover the identity of the reporting person, impeding or attempting to impede complaints or investigations into them, or attempting to impose sanctions on persons reporting in good faith or abusive actions towards them.

In all cases in which it is agreed to initiate an investigation, the labour procedures that may be applicable will be taken into account, as well as the statute of limitations for labour infractions.

## 20. Complementary measures

In addition to the above, and always with the aim of ensuring the validity and effectiveness of the institution's control processes, the ICN2 Board of Trustees may decide the following:

- To report the facts detected to any judicial or administrative authority;
- To consider compensatory actions with respect to third parties who may have been harmed by the facts under investigation;
- To propose corrective or preventive measures in relation to the facts detected;
- To carry out public communications via the media.

## V. COMMUNICATION

### 21. Communication

A copy of this Procedure will be delivered, by electronic means or on paper, to the Manager of ICN2. It may also be provided to reporting persons who so request or to persons concerned when they are informed of their status as such, thereby ensuring they are aware of all the stages of the procedure.

### 22. Interpretation

In the event of any doubts regarding the interpretation of this Procedure, queries should be sent to the Manager so that they can be resolved by e-mail: [canaldenuncias@icn2.net](mailto:canaldenuncias@icn2.net)

### 23. Training and awareness raising

ICN2 will also promote training and awareness raising among its personnel on the internal investigative procedure of the Whistleblower Channel. It will provide all its employees with specific training on this Procedure, which must include, in any case, the following points:

- The existence of a Whistleblower Channel at ICN2 for the purposes described here;
- How to use the Whistleblower Channel correctly and its process;
- Rights and duties of users of the Whistleblower Channel;
- The obligation of the addressees of this Procedure to inform ICN2 of any of the facts that come under this Procedure;
- Disciplinary system: The labour sanctions that may be imposed by ICN2 on its employees for failure to comply with the above obligation.

In this case, ICN2 will also keep evidence of any courses or other training or awareness-raising activities that have been carried out with ICN2 personnel and the Manager.

### 24. Undertaking by the addressees of the Procedure, as well as the Board of Trustees

All the addressees of this Procedure must be aware of it, must actively contribute to respecting it and must report both any breaches they may find and any deficiencies they may observe in its content or implementation.

Likewise, the ICN2's Board of Trustees must also provide a good example of foundational activity based on responsible practices, respect, transparency, professionalism and assumption of responsibility, for which reason it must also provide a good example of respect for this Procedure, making use of it whenever necessary.

## **VI. HISTORY, APPROVAL, ENTRY INTO FORCE AND AMENDMENT OF THE PROCEDURE. EVIDENCE**

### **25. History, approval and entry into force**

#### History:

The following table reflects the different versions of the Procedure that have been drawn up, as well as the date and subsequent modifications that each version of the document may have undergone:

<b>VERSION</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>CHANGES</b>
1.0	External advisor	April 2023	Initial version
2.0	To be determined	To be determined	To be determined

#### Approval and entry into force:

This Procedure will be approved by the ICN2 Board of Trustees. The date of approval will be recorded in the minutes. This date will be the date as from which the document will come into effect at the institution.

### **26. Follow-up, continuous adaptation and amendment of the Procedure**

#### Follow-up and continuous adaptation:

Periodic reviews of the content of the Procedure will be established to ensure its continuous adaptation to the realities of ICN2, legislative or jurisprudential changes, etc. Likewise, its use will be monitored.

#### Amendment:

The Board of Trustees may amend the Procedure on its own initiative and/or upon the proposal of any of the addressees of this Procedure.

### **27. Custody of evidence**

The Manager will ensure the safekeeping of all evidence that certifies the training, control, supervision and correction activities that have been carried out at ICN2 in accordance with the previous sections. This will be done in coordination with the corresponding personal data protection regulations corresponding to each area of ICN2's activity.

## **VII. CORPORATE SECRECY AND DATA PROTECTION**

### **28. Corporate secrecy**

The information used in any investigations carried out which is not of a public nature and which is the property of ICN2 will be considered, in general, as restricted and confidential (corporate secret). This will be subject to professional secrecy and cannot be passed on to third parties without the express authorisation of the Manager, when lawyers from outside ICN2 are involved in the investigation.

### **29. Data protection**

In order to ensure compliance with the legislation on personal data protection and, in general, to avoid the undue use of information, ICN2 will guarantee, in any investigative procedures that are initiated and with regard to both the reporting person and the person concerned or third parties, that:

- The processing of personal data resulting from the application of this Procedure will be governed by the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and the free movement of such data (GDPR); by Organic Law 3/2018, of 5 December, on the Protection of Personal Data and guarantee of digital rights (LOPD); by Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties; and by Law 2/2023 of 20 February, regulating the protection of persons who report regulatory breaches and the fight against corruption.
- Personal data will not be collected if their relevance is not evident in order to process specific information or, if they are collected accidentally, they will be deleted without undue delay.
- The processing of personal data in ICN2's Internal Information System will be considered lawful and ICN2 is therefore obliged to implement the System.
- ICN2 will provide the information referred to in Article 13 of the GDPR and Article 8 of the LOPD, providing the following information:
  - o The identity and contact details of the controller, which will correspond to the ICN2 Board of Trustees.
  - o The contact details of the data protection officer, where applicable.
  - o The purposes of the processing for which the personal data are intended and the fact that the legitimate interest for such processing, in accordance with the provisions

of Article 30 of Law 2/2023 of 20 February, on the protection of persons who report regulatory breaches and the fight against corruption, is the fulfilment of a legal obligation.

In the case of the processing of personal data resulting from public disclosure, the legitimate interests are based on the provisions of Article 6.1.e) of the GDPR, indicating that processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

In the case of the processing of special categories of personal data, the legitimate interest for such processing will be based on reasons of substantial public interest, in accordance with the provisions of Article 9.2 g) of the GDPR.

- The recipients or categories of recipient of the personal data.
- The period for which the personal data will be stored.
- Data protection rights and their exercise.
- The right to lodge a complaint with a data protection supervisory authority.
- ICN2 will inform users of the Whistleblower Channel of their rights regarding the protection of personal data and the exercise of their rights.
- ICN2 will expressly inform reporting persons and anyone who makes a public disclosure that their identity will in all cases be kept confidential and will not be communicated to the persons to whom the facts reported refer or to third parties.
- The person to whom the reported facts refer will in no case be informed of the identity of the reporting person or of the person who has carried out the public disclosure.
- In the event that the person to whom the facts reported in the complaint refer or to whom the public disclosure refers exercises the right to object, it will be presumed that, unless there is evidence to the contrary, there are lawful and compelling reasons that legitimise the processing of their personal data.
- Access to the personal data contained in the Internal Information System is limited exclusively to the following, within the scope of their authority and function:
  - a) The person responsible for the system and whoever manages it directly.
  - b) The Head of Human Resources/Persons or the competent body duly designated, only when disciplinary measures may be taken against a worker.
  - c) The person in charge of the entity's or organisation's legal services, if necessary, when legal measures may be adopted in relation to the facts reported in the communication.
  - d) Anyone who may be appointed as responsible for the processing.
  - e) The data protection officer.
  - f) Other persons, and even the communication thereof to third parties when this is necessary for the adoption of corrective measures in the organisation or the processing of the sanctioning or criminal proceedings that, if applicable, may be appropriate.
- In no case will personal data be processed that are not necessary to determine and investigate the actions or omissions referred to in the Internal Information System Management Policy and, if necessary, such data will be deleted immediately. Likewise, any personal data that may have been communicated and that refer to conduct that does not fall within the scope of application of the Policy or the Procedure (e.g. a complaint regarding labour issues) will be deleted.
- If the information received contains personal data included in the special categories of data, these will be deleted immediately, without any registration or processing.

- The data being processed may be stored in the Internal Information System only for the time necessary to decide on the appropriateness of initiating an investigation into the facts reported.
- If it is verified that the information provided or part thereof is not truthful, it must be deleted immediately, as soon as this circumstance becomes known, unless this lack of truthfulness could constitute a criminal offence, in which case the information will be kept for the necessary time during which the legal proceedings are carried out.
- In any case, when three (3) months have elapsed since the communication was received without any investigative actions having been initiated, it will be deleted, unless the purpose of storing such information is to provide evidence of the operations carried out by the Internal Information System.

Communications that have not been processed can only be recorded anonymously, without the obligation of blocking provided for in Article 32 of Organic Law 3/2018, of 5 December, being applicable.

- In no case may personal data be kept for a period of more than ten (10) years.
- Employees and third parties will be informed regarding the processing of personal data within the framework of the Internal Information System referred to in this article via the Whistleblower Channel management platform.
- The internal information system and those who receive public disclosures will not obtain data that enable the identification of the reporting person. Adequate technical and organisational measures will be taken to preserve the identity and guarantee the confidentiality of the data corresponding to the persons concerned and to any third party mentioned in the information provided, especially the identity of the reporting person in the event that he/she has been identified.
- The identity of the reporting person may only be communicated to the judicial authority, the Public Prosecutor's Office or the competent administrative authority as part of a criminal, disciplinary or sanctioning investigation. The reporting person will be informed of this circumstance before revealing his/her identity, unless this information could compromise the investigation or judicial proceedings.
- The provisions of Article 32 of Law 10/2010 of 28 April on the Prevention of Money Laundering and the Financing of Terrorism will also be respected when the exercise of rights affects a complaint related to the prevention of money laundering and the financing of terrorism.
- Should any interested parties wish to contact the ICN2 Data Protection Officer directly with the intention of formulating any complaint, query or doubt, they may write to the following e-mail address: [dpd@icn2.cat](mailto:dpd@icn2.cat)
- The Board of Trustees will be the controller for the processing of personal data.
- In the event these controllers jointly determine the purposes and means of processing, the corresponding arrangement must be signed, as per Article 26 of the European Regulation as well as Law 3/2018.