Corporate Compliance

Guideline for reporting and handling rule violations at Messer

Guideline

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Table of Contents

		Page
1.	Rule violations	4
2.	Reporting channels for rule violations	4
3.	Other misconduct	5
4.	Whistleblower, submission and exclusion of reports	5
5.	Reporting process	6
6.	Employee duty to cooperate	7
7.	Protection of Whistleblowers and supporters	7
8.	Protection of persons concerned by reports	8
9.	Retention periods	8
10.	Data protection	8

Messer's success significantly depends on the relationship between the company[1] and its employees[2]. This is characterized by mutual fairness, solidarity and trust. It is equally important that the employees comply with legal requirements and internal rules, in particular the Messer Code of Conduct, in their actions on behalf of Messer.

Non-compliance with regulations and internal rules damages Messer and its employees. This must be avoided and, if necessary, identified and stopped as quickly as possible. Messer's employees as well as business partners[3] should be able to report their knowledge of such violations without fearing sanctions.

It is important that Messer gains knowledge of any violations.

This guideline describes how information on rule violations as defined in section 1 below or on misconduct as defined in section 3 below can be reported and how these need to be dealt with.

If the standards set forth in this guideline are different from what is required under applicable international or local law, the stricter shall apply if not contradicted with applicable international or local law. This means that even in cases where the applicable international or local law is less strict, employees must still adhere to this guideline to the extent legally permissible.

[1] Messer SE & Co. KGaA and affiliated companies
[2] Including its full- & part-time staff, external and former employees, interns, trainees, temps from agencies, etc.
[3] Including suppliers, consultants, service providers and their employees.

1. Rule violations

Simple rule violations are violations or a sufficient suspicion of a violation of laws and internal rules with a possible economic damage of up to € 100,000.

Serious rule violations are in particular the following infringements or a sufficient suspicion of a violation of laws and internal rules:

(a) Violation of the Messer Code of Conduct, particularly including

  (i) violation of antitrust laws and competition law, as well as

  (ii) bribery and the granting and/or receipt of bribes or other benefits of monetary value, as well as improper granting of advantages;

(b) serious property crimes, such as fraud, bribery, embezzlement;

(c) penalties and/or possible or pending criminal proceedings against Messer or Messer employees with reasonable initial suspicion;

(d) penalties and/or possible or pending criminal proceedings against Messer or Messer employees with reasonable initial suspicion and in connection with their operational activities that may result in imprisonment; as well as

(e) violations causing considerable economic damage exceeding € 100,000 and/or violations which may result in significant reputational damage to Messer on a supra-regional basis, and

(f) violations of essential reporting obligations set by the Group Guidelines (Part A).

2. Reporting channels for rule violations

Employees and business partners can use the following specific reporting channels to report rule violations.

(a) Reporting channels for employees are:

  (i) Simple rule violations as defined in section 1.1 should primarily be reported to the respective Local Compliance Officer and/or Area Compliance Officer responsible for the respective subject matter and locations, however, they can also be reported via the Integrity Line (see section 2.1 (a) (ii) (A) below).

An overview of Messer Compliance Officers is available at https://messernet/web/compliance/helpdesk

(ii) Serious rule violations as defined in section 1.2 should primarily be reported using the free Integrity Line, or directly to the Chief Compliance Officer.

(A) Reports via the Integrity Line can be made by telephone (relevant telephone number can be found on the website) or web-based (www.messer.ethicspoint.com). A current description of the Integrity Line operated by Navex Global is available at https://secure.ethicspoint.eu/domain/media/en/gui/105307/faq.thml).

(B) The Chief Compliance Officer is available by e-mail (compliance@messergroup.com).

(b) Reporting channels for business partners are:

(i) Your direct contact persons at Messer, unless the report related to them, and

(ii) The Chief Compliance Officer, available by e-mail (compliance@messergroup.com).

3. Other misconduct

No rule violations within the meaning of this guideline are mistakes made within the scope if the work activity assigned to the respective employee, or violations of policies and department-related behavioural instructions (Group Guidelines Part B). Such misconduct primarily needs to be reported to the direct line supervisor and/or disciplinary supervisor.

If an employees is concerned that their report of misconduct will not be investigated by their direct line supervisor and/or disciplinary supervisor, or that they could be subject to reprisals as defined in section 7.4. in context of his report, the reporter can also use the Integrity Line and/or other reporting channels defined in section 2.1 (a) for their report; the same applies if the misconduct also constitutes a serious rules violation as defined in section 1.2.

4. Whistleblower, submission and exclusion of reports

A **Whistleblower** within the meaning of this guideline is any employee who is aware of (possible) rule violations and/or misconduct and provides information about it to the persons referred to in sections 1 and 3.

Messer employees are obliged to cooperate in the clarification of rule violations and/or misconduct as part of their contractual duties. Depending on the severity of the incident (e.g. preparation of crimes, immediate danger for life and limb), this may also result in an obligation to issue a report or to inform authorities.

Information about rule violations and/or misconduct should be accompanied by a description of the observed facts that is as complete as possible, precise naming of the acting persons, and suitable documents, insofar as available. An incomplete description can easily lead to false conclusions and suspicions and complicate the necessary internal investigation. For this reason, reports should therefore principally be filed stating the Whistleblower´s name. This will facilitate later enquiries that are helpful and necessary for subsequent internal investigations. Reports provided in compliance with the above considerations serves the aim of enabling an effective internal investigation and protecting the interests of persons who are not involved.

If a Whistleblower requests that his or her identity not be disclosed to the company, this shall be ensured.

Information concerning the private and intimate sphere of employees are excluded, insofar as they are unrelated to their professional conduct in any way.

5. Reporting process

Information on rule violations and/or misconduct is initially checked for plausibility.

The plausibility of reports received via the Integrity Line will be initially reviewed by the Chief Compliance Officer and the Compliance Officer Corporate. The Chief Compliance Officer decides whether the report is to be assigned to an Area Compliance Officer or a Local Compliance Officer for further processing.

If a report is plausible, it will be reviewed as a part if an internal investigation. An internal investigation shall be conducted in accordance with the following principles:

(a) Protecting the Whistleblower and/or ensuring that anonymous reports cannot be traced back to them.

(b) Not disadvantaging Whistleblowers who make reports in good faith; this is the case if they have sufficient reason to believe the issues, they report to be true at the time of making their report, based on the circumstances and available information.

(c) Internal investigations are conducted neutrally and in compliance with the applicable legal requirements, in particular the regulations of labour law and data protection law.

(d) Persons concerned who are the subject of a suspicion shall generally not be involved in the conduct of an internal investigation (to prevent the destruction of evidence and avoid conflicts of interest).

(e) The rights of persons concerned by reports, against whom the underlying suspicion is directed, shall be protected.

6. Employee duty to cooperate

All employees are obligated to support internal investigations within the scope of their employment. This also includes their full provision of requested business documents and the provision of comprehensive and truthful information on business transactions, insofar as this does not conflict with statutory regulations.

Anyone interfering internal investigations by influencing witnesses or colluding among witnesses, commits a serious violation of their employment/contractual duties, which will result in immediate disciplinary action.

7. Protection of Whistleblowers and supporters

Messer protects Whistleblowers acting in good faith and ensures that they are dealt with in an objective and fair manner.

Without their explicit consent, the identity of Whistleblowers must not be disclosed to any other person but the authorized employees responsible for receiving reports or taking follow-up actions on reports. This also applies to any other information from which the identity of a Whistleblower can be directly or indirectly derived.

The identity of a Whistleblower as well as all other information as per section 7.2. may only be disclosed if this is a necessary and proportionate duty in the internal investigations by local authorities or legal proceedings.

Any form of reprisals (e.g. taking of disciplinary measures, shifting of tasks, denial of benefits, negative performance assessments, discrimination, etc.) or threats of reprisals constitute a serious breach of the employment and/or service contract and will result in consequences under labour law.

Whistleblowers experiencing any disadvantage because of a report they made should contact the Chief Compliance Officer. The Chief Compliance Officer is required to investigate the case immediately and clarify the circumstances.

The above measures also apply in benefit of persons supporting Whistleblowers in making their reports.

Whistleblowers who make a report maliciously or improperly must expect legal consequences, including in particular measures under labour law. This also applies if Whistleblowers initially report their information to third parties first without the interest of clarifying the actual or alleged rule violation and/or misconduct being in the foreground.

8. Protection of persons concerned by reports

If a suspicion of a rule violation and/or misconduct is to be investigated by starting an internal investigation, the person concerned by a report (hereafter: **person concerned**) will be informed before the internal investigation is completed. At the same time, the person concerned shall be given the opportunity to comment on the suspicious facts and the right to access the file.

If it becomes apparent at an early stage of the internal investigation of a possible rule violation that the reported suspicion is unjustified, a hearing and information of the person concerned can be waived.

Messer protects the honour, reputation and personal rights of employees concerned by reports. If the person concerned requests as a part of an internal investigation commissioned by the Compliance Officer, the supervisor will not be informed of the suspicions unless questioning the supervisor is mandatory to clarify the facts.

9. Retention periods

Personal data is stored and deleted in accordance with the applicable legal regulations.

10. Data protection

This guideline serves as a legal basis for the processing of personal data insofar as this is necessary for the exertion/ fulfilment of the rights and duties arising from this guideline. In all other respects, the applicable legal basis for authorization of data processing shall apply.

In the context of handling reports, personal data shall only be collected and processed to the extent permitted by law and only to the extent necessary for investigating the respective report and preparation of the related reports.

In addition, only the persons in charge of the investigation of the report have access this data and only for the purpose required by the respective procedure. The data will only be forwarded, transmitted, or otherwise disclosed to the extent permitted by data protection law in this case.

With regard to the storage and deletion of personal data the provisions of section 9 shall apply.

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Messer SE & Co. KGaA

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