



**CENIEH**  
Centro Nacional de Investigación  
sobre Evolución Humana

**Action when there is suspicion of fraud-Ed1**

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**ACTION WHEN THERE IS SUSPICION OF FRAUD**

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## 1. OBJECT AND SCOPE OF APPLICATION

- 1.1. The object of this protocol is to be an instrument appropriate for the prosecution of fraudulent or corrupt conducts or those that could pose risks to the ethical principles and values declared in the CENIEH Code of Ethics, or to compliance with the measures and controls implemented to avert or minimize the risks of fraud and corruption.
- 1.2. This procedure is applicable to the governing and administrative bodies and persons working at the CENIEH who perform tasks of management, control, and payment, as well as other actors to whom any of these duties have been delegated.

## 2. REFERENCES.

- Anti-fraud and conflict of interests policy.
- Code of Ethics of the CENIEH.
- Act 39/2015, of October 1st, of the Common Administrative Procedure for the Public Authorities.
- First Collective Agreement of the Consorcio CENIEH published in the Boletín de la Provincia de Burgos no. 8, on January 12th 2012.
- Legislative Royal Decree 5/2015, of October 30th, which approves the consolidated text of the Basic Public Employee Charter Act.
- Legislative Royal Decree 2/2015, of October 23rd, which approves the consolidated text of the Labor Act.

## 3. RESPONSIBILITIES.

- **Governing Council:** Approval of the Anti-Fraud Measures Plan.
- **Operational managers** (in the sense of managing body): Set out a procedure to address conflicts of interests and take charge of implementing the measures and controls in the Plan for preventing, detecting, and averting fraud and corruption. Assess the risk of fraud and corruption.
- **Management:** Guarantee the rights of informants. Evaluate resolution proposals from the Fraud Control Committee and take the appropriate decisions. Report any fraudulent deeds to the competent authorities. Adopt corrective measures. Appoint the members of the Fraud Control Committee. Evaluate and adopt, if appropriate, proposals issued by the Fraud Control

Committee. Start disciplinary procedures, take precautionary measures, and impose the appropriate sanctions. Make periodic reports to the Governing Council.

- **Fraud Control Committee:** Track implementation of the measures to prevent fraud, corruption, and conflicts of interests. Embark on internal investigations when there is suspicion of actions constituting fraud, designate an investigator, and propose a resolution. Communicate the steps taken to the workers' representatives. Evaluate the harm caused. Compile an annual report for the Governing Council, including the investigations carried out and measures adopted, and such proposals to update or review the protocol as they deem relevant.
- **Investigator:** Perform the investigation and compile the report for the Fraud Control Committee.

#### **4. INTERNAL INVESTIGATIONS**

If any conduct that constitutes possible fraud, corruption, or a conflict of interests regarding the management of CENIEH funds, broadly construed, (European funds, RRF funds, Spanish funds, etc...) is detected, whether via the whistleblower channel, an internal or external audit, or by some other means, the Fraud Control Committee will launch an internal investigation and designate one of its members as investigator who, while respecting the basic rights of those involved, will take such steps as they deem appropriate to confirm whether the indications are well-founded.

Management, and ultimately the Governing Council, guarantees that no action will be taken against informants or their interests unless, following detailed examination, it is concluded that the complaint was false and made in bad faith, with the mere intention of undermining the professional reputation or good name of the persons reported, or that the claimed facts are manifestly untrue.

In the internal investigation process, the person being investigated shall be entitled to be assisted by an attorney of their choice, not to admit their guilt, not to testify against themselves, to remain silent, and not to answer any or some of the questions put to them.

The investigator may avail of external help from independent experts.

The internal investigation procedure shall have a duration of six months, counted from adoption of the initial resolution, and can be extended for three months more when the circumstances or complexity of the case so compel.

This phase will conclude with the investigator's report, which will basically be one of two options:

- a) Archival of the complaint with a record of the cause, and notifying the informant if there was one.
- b) Confirmation that the complaint is credible and stating its legal significance.

This result means, per se, that sufficient lines of evidence have been tried to confirm the legitimacy, truthfulness, and seriousness of the facts reported, all of which will have to appear in the investigator's report, which will be submitted to the person investigated for rebuttal, and then to the Fraud Control Committee, which will issue a proposed resolution of archival or confirmation that the complaint is credible and stating its legal significance. This will be submitted to Management, which will evaluate this proposal and take the decision that it deems appropriate.

Custody and archival of the complaints received will be the responsibility of the Fraud Control Committee.

## 5. REACTIVE MEASURES

If the complaint is found to be credible, and that therefore a fraudulent act was committed, the resolution should propose the appropriate reactive measures, such as:

1. Take suitable measures to evaluate the harm of the fraudulent or allegedly fraudulent conduct has caused or could cause to public funds, adopting corrective measures and communicating these to the managing body for the funds misappropriated or allegedly misappropriated.
2. Report the deeds that have come to light to the competent authorities (the Servicio Nacional de Coordinación Antifraude (SNCA)). When the case could constitute a criminal offense, it will be reported to the competent public prosecutor or courts. All the known information and details shall be furnished to the authorities to facilitate investigation.
3. Suspend professional relations with any collaborators if any of these actors could be related to the offense as perpetrator, accomplice, or accessory before or after the fact.
4. Prepare a confidential report or launch a disciplinary procedure to determine responsibility.
5. Assess whether the incident is a single or systematic event. If it is a single event, the consequences for the specific case should be corrected. However, if it is systematic, in addition to correcting the consequences, the ex ante evaluation should be reviewed and new or modified controls should be introduced, within no more than 15 days.
6. Notify the results of the investigation internally, at least to the workers' representatives, stating the facts uncovered and the corrective or disciplinary measures taken.

The processing, communications, and notifications shall be performed in accordance with title IV, chapter II, sections one and two, of the Act 39/2015, of October 1st, on the Common Administrative Procedure for the Public Authorities.

## 6. DISCIPLINARY REGIME

1. CENIEH workers are subject to the disciplinary regime established in the Center's own Collective Agreement and the further development of this in the sections below by virtue of the implementation of the Anti-Fraud Plan. For any points not regulated therein, the disciplinary regime regulated in the Legislative Royal Decree 5/2015, of October 30th, which approves the consolidated text of the Basic Public Employee Charter Act, and the rules set out by the law on the Civil Service developing that Charter, shall be applicable. For points not regulated either by the Collective Agreement or the Basic Public Employee Charter Act, labor law shall apply.
2. Workers who induce others to commit acts that constitute disciplinary offenses shall bear the same liability as the offenders.
3. Workers who act as accessories after the fact for serious or very serious offenses shall likewise bear liability, when serious harm has been caused to the public authorities or the public.

### 6.1. Exercise of the disciplinary power.

1. The CENIEH shall punish infringements committed in the course of their duties and responsibilities by the staff in its service, without prejudice to any liability for damages or criminal offenses that could arise out of such infringements.
2. The disciplinary power will be exercised in line with the following principles:
  - a) Principle of legality and classification of infringements and penalties, as determined in regulations or collective agreements, as may be applicable.
  - b) Principle of nonretroactivity for punitive measures that are unfavorable (to the presumed offender) and retroactivity for those that are favorable.
  - c) Principle of proportionality, applicable both to classification of the infringements and sanctions and to their application.
  - d) Principle of culpability.
  - e) Principle of presumption of innocence.
3. When the investigation in a disciplinary procedure brings to light plausible indications of criminality, the procedure will be suspended and a report made to the public prosecutor.
4. The findings of the courts are binding upon the CENIEH.

### 6.2. Disciplinary offenses.

1. Disciplinary offenses may be very serious, serious, or minor, as set out in article 41.2 of the CENIEH Collective Agreement.
3. In addition to the classification in article 41.2, conducts that are corrupt or fraudulent and that could constitute subsidy fraud or misappropriation of funds are classified as very serious or serious because they represent a breach of the general duty of loyalty to the Constitution or of the duties of public employees, or the adoption of manifestly illegal agreements which cause serious harm to the authorities or the public, or clear breach of the essential functions inherent to the post or tasks entrusted, or breaches of impartiality, or noncompliance with the regulations on incompatibilities or the duty of abstention, or conducts constituting intentional crimes that cause harm to the authorities.

### 6.3. Sanctions.

1. The following specific sanctions may be imposed for the offenses described in the previous section under the auspices of the Anti-Fraud Plan:
  - a) Dismissal, which may only sanction the commission of very serious offenses and will entail disqualification from any new employment contract with similar duties.
  - b) Suspension from duties, or from employment and salary, for a maximum period of 6 years.
  - c) Reprimand, which will consist of a penalization for the purposes of career prospects, promotion, or voluntary mobility.
3. The scope of each sanction shall be established in the light of the degree of intentionality, carelessness, or negligence revealed in the conduct, the damage to the public interest, any reiteration or recurrence, and the degree of participation.

#### 6.4. Prescription of offenses and sanctions.

Strictly within the scope of the corrupt or fraudulent conducts described in the previous section under the auspices of the Anti-Fraud Plan:

1. Very serious offenses will be prescribed after three years, and serious ones after two years.
2. The prescriptive period for offenses will start to be counted from when the offense was committed, or from when commission stopped in the case of continued infringements. The prescriptive period for sanctions will start from the date of imposition of the sanction.

#### 6.5. Disciplinary procedure and provisional measures

1. No sanction may be imposed for the commission of very serious or serious offenses except by the procedure established above.
2. The disciplinary procedure to be established shall always be structured to reflect the principles of efficacy, rapidity, and procedural economy, with full respect for the rights, including the right to defense, of the presumed perpetrator.

The procedure shall establish the due separation between the investigation and disciplinary phases, which shall be entrusted to different bodies.

3. When so envisaged in the rules governing disciplinary procedures, measures of a provisional nature may be taken to ensure efficacy of the final resolution to the procedure, with due justification.

Provisional suspension as a precautionary measure as part of this disciplinary procedure may not be for longer than 6 months, unless the procedure is paralyzed for reasons attributable to the person in question. Provisional suspension may also be agreed as part of a legal process, and it shall remain in force for such time as the period of remand or other measures ordered by the judge which would render it impossible for the person to perform their duties. In such a case, if the provisional suspension exceeds six months, the person will not lose their job.

#### VERSION HISTORY

<i>Version</i>	<i>Changes</i>
1	First edition