

The logo consists of a large black speech bubble shape. Inside the bubble, the text 'WHISTLEBLOWERS AUTHORITY' is written in white, bold, uppercase letters. To the right of the bubble, a smaller white speech bubble contains the text 'ANNUAL REPORT 2018'. The background is a green sunburst pattern with varying shades of green.

**WHISTLEBLOWERS  
AUTHORITY**

ANNUAL REPORT

**2018**

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## A year of change

For the Whistleblowers Authority, 2018 was a year of change. In January, the interim Chairman E.R. Muller (prof. mr. dr.) started implementing the recommendations set out in the report issued by M.A. Ruys (drs.). When I joined the organisation in July 2018, I continued that course as the new Chairman, together with the interim Board member Th.W.A. Camps (prof. dr.).

The priorities were primarily of an organisational nature.

For example, the staffing capacity was increased, we made a start with streamlining the work processes, a new ICT system was introduced, and two new Board members were recruited to join the organisation in 2019.

At the same time, our regular work continued. In 2018, 365 new requests for advice were accepted for processing. In fourteen of these cases, we determined this concerned a whistleblower case. At the request of the reporters of wrongdoing, seven new investigations were started up in 2018. The Authority also conducted an extensive preventive survey regarding the position of confidential counsellors in organisations.

In June, the Universities of Utrecht and Greenwich published a comparing survey into the whistleblower facilities in the Netherlands and eleven other countries. According to the researchers, the Netherlands distinguishes itself by having advice, investigation and prevention under a single roof in an independent authority financed by the government. In addition, the Whistleblowers Authority addresses all sectors of society.

This multi-faceted approach and bundling of facilities offers key benefits to whistleblowers. Confidential advice and counselling, the option of having an investigation conducted and preventive decrease of the risk of structural wrongdoing.

The work completed in 2018 and the progress made does not imply that the Authority can lean back. A substantial amount of work is still ahead of us. One condition for further reinforcement of the Authority has already been fulfilled: the employees of the Authority are passionately convinced of the importance of the three core tasks of the Authority: advice, investigation and prevention. If whistleblowers are protected and appreciated, they can play a key role in tackling or preventing social wrongdoing.

*Wilbert Tomesen, Chairman Whistleblowers Authority*

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# ONE AUTHORITY, THREE TASKS

Advice, investigation and prevention under one roof

## One Authority, three tasks

### Improvement of the position of whistleblowers, striving for integrity in organisations

The Whistleblowers Authority was started up in 2016 after the Whistleblower Authority Act had become effective. The Authority offers whistleblowers advice and support, and in some cases investigation of the wrongdoing or the treatment of the whistleblower. The Authority contributes to preventing integrity non-compliance within organisations. This helps the Whistleblowers Authority play a role in improving the integrity of Dutch organisations.

The Whistleblowers Authority is a non-departmental public body (NDPB - ZBO), with independent operations. The Authority consists of a Board supported by an administrative office. This office consists of a staff, an Advice department, an Investigation department and a Prevention department.

### Professional, independent, transparent and expert

The Whistleblowers Authority is professionally involved with whistleblowers. The Authority gives advice and support and offers an option to request an investigation. The Whistleblowers Authority is aware of the inequality in terms of options and resources that a whistleblower and an employer have.

The Whistleblowers Authority is independent in all its operations. The body is independent in its assessment of the issue whether a person should be classed as a whistleblower,

the required form and content of the advice, whether a request for investigation can be accepted, in investigations to be started, in the entire investigation process and in its assessments.

The Whistleblowers Authority works as transparently as possible. However, the Authority interacts with any employees reporting alleged wrongdoing in a private and confidential way in order to provide maximum protection of the reporting employee. This also applies for witnesses that are heard when investigating. Research reports are anonymised before publication on the website of the Whistleblowers Authority.

The Whistleblowers Authority offers professional expertise regarding reporting alleged wrongdoing, the position of whistleblowers, disadvantaging that can occur due to reporting wrongdoing, and promoting integrity among public, semi-public and private organisations. The insights gained are shared with employers, inspectorates, supervisory bodies, legal aid providers, unions, Works Councils, integrity professionals, confidential counsellors and the legislator.

### One Authority, three tasks

Advice, investigation, prevention. One Authority, three tasks. Separate tasks that jointly contribute to improving the whistleblowers' position and promoting integrity within organisations.

# ADVICE

Advice and support for reporting work-related wrongdoing

## Advice

### The advisory role

The Whistleblowers Authority informs, advises and supports employees that are confronted with suspected or actual wrongdoing and wish to report it. Such wrongdoing should go beyond the individual level and represent a risk or hazard to public health or the safety of persons, the environment, or the functionality of an organisation.

According to legislation, the employee must in principle report the wrongdoing within the relevant organisation first. This can be done through an internal reporting procedure. It is the obligation of every organisation with fifty or more employees to have such a reporting procedure. This should offer the employee the option to consult with an advisor in full confidentiality.

The employee may request advice with the Advice department of the Whistleblowers Authority, e.g. about the steps of the reporting process or about the risks and implications of reporting wrongdoing. The advice and counselling are fully confidential and free of charge.

During the advice process, the employee personally manages his/her report. This means he/she is also free to decide against proceeding with reporting. The Whistleblowers Authority helps the employee make well-considered decisions.

### Trends and developments in 2018

In 2018, 365 requests for advice were received from employees who were confronted with suspected or actual wrongdoing in their workplace. In fourteen cases, these requests were classed as a whistleblower case. This concerns reports of fraud, corruption, safety hazards to people or the environment, or a risk to the performance of the relevant organisation.

#### When is someone classed as a 'whistleblower'?

The Whistleblower Authority applies the following criteria:

*There is an employment relation (e.g. employee, self-employed professional, volunteer, trainee or apprentice).*

*It concerns structural social wrongdoing that relates to non-compliance with legislation or regulations or a risk to public health, the safety of people, environmental hazards, or the performance of the relevant organisation.*

*There should be reasonable suspicion of wrongdoing: in order to lodge a whistleblower report, the employee must have personally witnessed actions or documents proving the social wrongdoing.*

In most cases, employees indicate they are disadvantaged by filing an internal report. This includes isolation, bullying, threats, transfers, not getting a promotion, or termination of employment. Advice cases have shown that employers often do not immediately recognise whistleblower reports at such, downplay their importance or reduce them to a one-off integrity non-compliance case. Also, we have frequently seen that organisations subject to mandatory implementation of a whistleblower procedure do not have such a procedure in place. If organisations do have a whistleblower reporting procedure, it is frequently not applied or applied incorrectly. Integrity officers, compliance officers and confidential counsellors within organisations are often not familiar with the whistleblower procedure and do not always understand in which situations this procedure applies. This means employees must often persevere for a long time to have the report accepted and investigated as a whistleblower report. Identifiability and fear of retaliation is reason for some employees to decide against reporting wrongdoing after all.

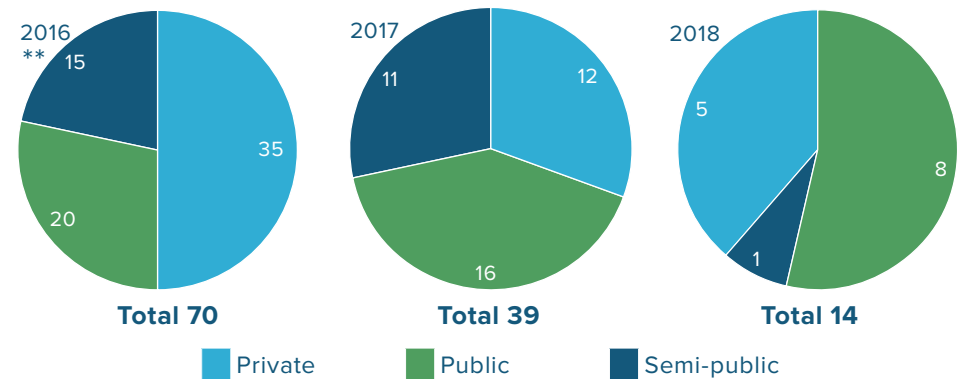
Some employees often need both advice about the reporting procedure and legal advice regarding their employment position. They are usually unable to afford legal aid. A legal aid insurance policy often does not cover such cases. Often, the cost is a reason to discontinue the reporting process. Those who continue with a whistleblower report find the reporting procedure intense and emotionally challenging. This is why the Authority feels that professional psychological and social support for whistleblowers is essential. In 2018, whistleblowers made incidental use of this service. The provision of psychological and social support on a structural basis will soon be given shape in more detail.

Figures Advice

Requests for advice in process 2018

	Whistle-blower	Un-known*	None	Total
New requests in 2018	14	127	224	<b>365</b>
Cases in progress started in 2017	23	47	-	<b>70</b>
Cases in progress started in 2016**	23	3	-	<b>26</b>
<b>Total number in progress</b>	<b>60</b>	<b>177</b>	<b>224</b>	<b>461</b>

Distribution of new whistleblower cases



\* The category "unknown" is very broad and the cases vary from situations where the Advice department needs to further study documents in order to assess the case to situations where the employee no longer responds for some time after a first request for advice but the case cannot yet be closed.

\*\*From the inception of the Whistleblowers Authority on 1 July 2016.



# INVESTIGATION

Investigation after wrongdoing and/or disadvantaging of the employee as a result of filing a whistleblower report.

### The investigation task

The Whistleblowers Authority investigates all suspected work-related social wrongdoing. The department may also investigate if the employee was disadvantaged by the employer as a result of filing a whistleblower report: the employee treatment investigation.

Employees can submit a request for investigation to the Whistleblowers Authority. Accepting a case is subject to certain criteria and conditions imposed by the legislator. Some requests do not fulfil the criteria and have to be rejected, e.g. if the social interest is not sufficiently affected, or in the event where not all steps of the reporting process were completed in accordance with the Whistleblower Authority Act, i.e. via an internal reporting procedure or a competent supervisory body.

The investigation mostly consists of a desktop study and witness interviews. The information collected is used to reconstruct the actual events. After sharing the draft report, the parties involved have an opportunity to provide their perspective of the investigation. The final investigation report is subsequently anonymised and published on the website of the Whistleblowers Authority.

The report contains conclusions and, if applicable, also recommendations to resolve or prevent repetition of the wrongdoing identified. The employer can also receive recommendations to improve the way it treats employees reporting wrongdoing.

The Whistleblowers Authority may monitor if these recommendations are acted on.

The report does not issue an opinion about any civil law liability. The employees may use the report to present any non-compliant work-related disadvantaging as a result of reporting the wrongdoing to the Court of Law.

### Trends and developments in 2018

In January 2018, the Investigation department started the implementation of the recommendations set out in the Ruys report relevant to the investigative process. The assessment and investigation process was streamlined and the Authority's investigative capacity was increased<sup>1</sup>. New legislation and regulations imply that the legal limits would be explored. In some cases, this resulted in appeal and complaint procedures from parties involved and delays in the investigative process.

<sup>1</sup>In early 2018, 3.3 FTE were available for conducting investigations. This reinforcement consisted of an average of 1.4 FTE p/m (four contracted part-time investigators).

Since 2016, a total of fifty requests for investigation have been submitted. Of these, 28 were declared inadmissible; eight requests for investigation are currently being assessed.

The House for Whistleblowers is currently conducting fourteen investigations; seven of them started in 2018. The first four investigation reports are expected to be published in 2019.

In 2018, two monitoring assignments were completed that had been transferred from the former OIO (Investigative Council for Government Integrity).

## Figures investigation

### *Requests for investigation*

	Wrong-doing	Treatment	Both	Total
Year-end 2016*	2	8	2	12
Year-end 2017	5	6	8	19
Year-end 2018	6	2	11	19
<b>Total</b>	13	16	21	50

### *Investigations accepted for processing*

	Wrong-doing	Treatment	Both	Total
Year-end 2016*	0	4	0	4
Year-end 2017	0	2	1	3
Year-end 2018	1	3	3	7
<b>Total</b>	1	9	4	14

\*From the inception of the Whistleblowers Authority on 1 July 2016.

# PREVENTION

Promoting integrity within public, semi-public and private organisations

### The prevention task

The Whistleblowers Authority invests in reducing the risk of integrity non-compliance within organisations and potential ensuing wrongdoing. The Prevention department of the Authority focusses on promoting integrity in public, semi-public and private organisations. A statutory reporting procedure, a confidential counselling function with a professional structure, objective internal investigation of reports, and an open and safe organisational culture all contribute to being able to detect and correct errors and wrongdoing faster. Such a work climate would better protect whistleblowers against being disadvantaged. Ideally, they should be appreciated for the fact that they wanted to safeguard the organisation against wrongdoing. The responsibility for promoting integrity within the organisation is primarily in the scope of the employer's tasks. Many organisations lack the practical knowledge to actually implement this.

This is why the Prevention department provides information to employers, answers questions, conducts research into integrity policy and maintains relevant networks. Publications and practical models are made available. The main target groups are integrity professionals and confidential counsellors. The Whistleblowers Authority frequently participates in international conventions, and is involved in various international evaluations regarding whistleblowing and integrity,

including conventions of OECD<sup>2</sup>, GRECO<sup>3</sup> and the United Nations. Via the Ministry of BZK (*Home Affairs and Kingdom Relations*), the Authority was involved in preparing a European directive about whistleblowing.

### Trends and developments in 2018

The Prevention department was contacted 214 times, mainly by employers and public interest groups. A total of 34 presentations were given at various meetings and conventions regarding integrity issues within organisations. We have noted a significant decline in questions regarding the mandatory reporting procedure. A potential explanation for this decrease is a publication on this subject issued by the Whistleblowers Authority<sup>4</sup> that answers many frequently asked questions regarding the reporting procedure. In 2018, more questions were asked regarding issues such as the position of the confidential counsellor and conducting internal investigations.

A key issue was the position of the Confidential Counsellor in organisations. Experience has shown that confidential counsellors are insufficiently involved in detecting wrongdoing. As these persons perform a key role in reporting integrity non-compliance and structural wrongdoing, the Prevention department conducted a survey among confidential counsellors regarding their position.

<sup>2</sup>Organisation for Economic Co-operation and Development.

<sup>3</sup>The Group of States against Corruption.

<sup>4</sup>Integrity in practice: the reporting procedure.

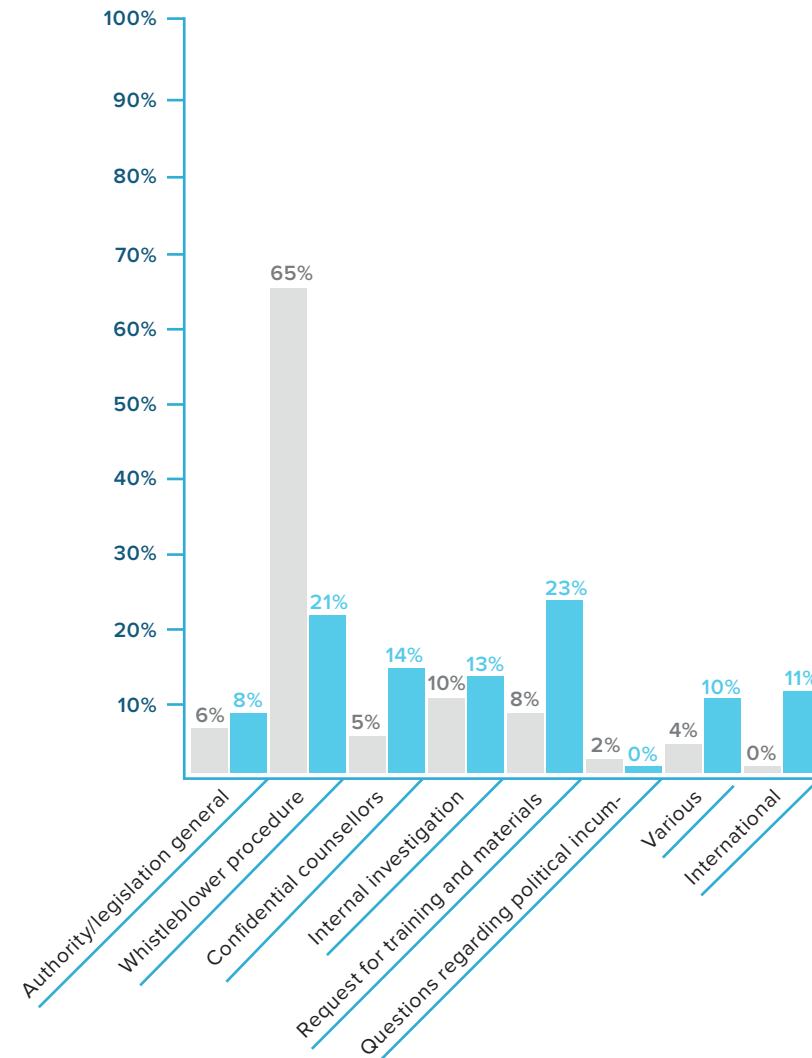
This made clear that the role of the confidential counsellor is often unclear and not fully embedded in the organisation. There is a substantial need for training courses to increase the quality and expertise of confidential counsellors. According to the researchers of this survey, employers and public interest groups should play a key role in this context. Based on the survey, we issued the publication Integrity in practice: the Confidential Counsellor.

The Authority is frequently contacted by international parties with various questions. In June, at the instructions of the Authority, the Universities of Utrecht and Greenwich published a comparing study into whistleblower facilities in the Netherlands and eleven other countries.

According to the researchers, the Netherlands distinguishes itself by having advice, investigation and prevention under a single roof in an independent authority financed by the government. In addition, the Whistleblowers Authority addresses all sectors of society.

### Figures Prevention

Questions to Prevention  2017 n = 513  2018 n = 214



# ORGANISATION AND OPERATIONS

## Rebooting the Whistleblowers Authority

For the Whistleblowers Authority, the year 2018 was dominated by the reboot after the publication of the Ruys report. This report was about the structure of the Whistleblowers Authority, the working methods, the governance structure and the required competencies of the Board and the employees (*Advice for rebooting the Whistleblowers Authority: advice, independent investigation and prevention*).

Based on the report, the Board members stepped down on 8 January 2018, succeeded by interim Board members E.R. (Erwin) Muller (prof. mr. dr.) (Chairman) and Th.W.A. (Theo) Camps (prof. dr.). On 1 July 2018, W.B.M. (Wilbert) Tomesen (mr.) was appointed as the new Chairman of the Whistleblowers Authority. In August 2018, we started the recruitment process of two new Board members, who took office in March 2019.

Following the Ruys report, the Minister of BZK (*Home Affairs and Kingdom Relations*) sent the Dutch House of Representatives a progress report in June 2018. This sets out the measures that the interim Board implemented.

Articles of Association were adopted and advice and investigation protocols were implemented. The advice and investigation protocols align the work processes of both departments based on the experience gained in the short advice and investigation experience of the Authority. This experience was a basis for reconsidering various components of the different work processes.

In 2019, we are specifying the processes. Where necessary, this will lead to further optimisation of the advice and the investigative process.

In the second half of 2018, the Board performed surveys into the governance and the existing roles, tasks and responsibilities of the Board, the Director, the coordinators and the employees. These surveys were also shared with the organisation. This mainly focussed on interconnecting the three key task areas of the Whistleblowers Authority, naturally while retaining the three departments' individual, independent tasks and responsibilities. We had a workforce review and a regular cycle of performance assessment will be introduced.

During the past year, the workforce of the Authority was increased in a very short time span by means of secondment and a flexible shell. Furthermore, an inventory was prepared of the long-term requirements regarding the workforce, including the associated budget. The first talks about this subject with the Ministry of BZK have been completed. The Ministry committed to expansion of the workforce.

In early 2018, the Whistleblowers Authority migrated to a new ICT environment. Furthermore, a new case system was implemented to further increase efficiency in processing cases.



During the reboot period, the usual advice, research and prevention activities of the Whistleblowers Authority were continued. In 2019, the Whistleblowers Authority will further implement the recommendations of the Ruys report.

### Board

As per 8 January 2018, the first Board of the Whistleblowers Authority stepped down. From this date onwards, the Board consisted of:

- E.R. (Erwin) Muller (prof. mr. dr.): interim Chairman and Board member for Investigation (from 8 January through 1 July 2018).
- W.B.M. (Wilbert) Tomesen (mr.): Chairman and Board member Investigation (from 1 July 2018).
- Th.W.A. (Theo) Camps (prof. dr.): interim Board member for Advice. (from 14 March 2018).

### Budget and realisation

For 2018, the Whistleblowers Authority had a budget of € 2,994,000 available. The 2018 realisation amounted to € 2,798,983. This shows that the Whistleblowers Authority remained within budget.

### Office and personnel

The office had a workforce of 17.6 FTE as at 31 December 2018. Of this number, 14.93 FTE were filled in on that date. A total of sixteen employees worked with the Authority. The average age of employees was 48.3.

The sick leave rate amounted to 4.1% (4.9% in 2017).

In comparison: the sick leave rate in the Public Government and public services sector was 5.0% in 2018

### Quality assurance

In late 2018, we established that the coordinators of the three departments are primarily responsible for developing, monitoring and applying the quality standards and agreements within their departments.

We make use of test reading within the department (the four-eye principle) and work with protocols (published on the website of the Authority). Correct registration and documentation of cases is a key highlight.

The Executive and the Board have the final responsibility for the quality of work.

### Complaints and Web requests

Four people have submitted a complaint in 2018. Among others, the complaints concerned progress of and/or communication about an investigation. Another complaint concerned not making the meeting report available as a Word document. Of the four complaints submitted, three were fully processed in the course of 2018. If a complaint is submitted, the Whistleblowers Authority always contacts the plaintiff by telephone in order to check if the complaint can be resolved directly in a call.

Two complaints were processed in a formal process and one in an informal process. The fourth complaint is still in progress. In 2018, a single WOB (Wet openbaarheid van bestuur - Public Access to Government Information Act) request was submitted. This request pertained to preparing the confidentiality statement that a submitter and an employer must sign before they receive a copy of the reconstruction of facts and gain access to the Authority's investigation case file.

### GDPR

In the past year, the Authority worked on the implementation of the General Data Protection Regulation (GDPR) that became effective as per 25 May 2018 to replace the Private Data Act. This involved adjusting the privacy statement on the website accordingly, entering all private data processing in a register, and updating various work methods. We appointed an external Data Protection Officer to monitor and supervise this. In 2018, no requests for private data access were received while the Private Data Act was effective. After 25 May 2018, the Authority has received five requests for private data access after the GDPR became effective.

### Investigation into the Authority

On 19 December 2018, the Minister of Home Affairs and Kingdom Relations informed the Dutch House of Representatives of reports of suspected wrongdoing internally in the Whistleblowers Authority. These reports concern the general performance of the Authority (including the administrative organisation)

and the appointment procedure of the current Chairman of the Authority. The Minister has ordered an investigation based on the reports. Naturally, the Whistleblowers Authority will fully cooperate. The investigation into the performance of the Authority is conducted by the National Ombudsman. The investigation into the appointment procedure of the current Chairman is conducted by a Committee appointed by the Minister.

### ICT

The Authority migrated to a new ICT environment in early 2018. A new case file system was implemented to enable more efficient processing of cases. The implementation of this system was a major operation. This concerns a system that the Authority uses to record all cases in a uniform, secure manner. This also serves to segregate access to the Advice and Investigation departments.

The system also offers someone reporting wrongdoing the option of digitally submitting and editing their messages. The system offers insight in cases active in the Authority's system at anonymised aggregate level. This serves to enable the Authority to reinforce its knowledge function. The organisation started the internal evaluation of working with this system in late 2018.

## Terminology of the Whistleblowers Authority

In this annual report, various terms are used regarding the Whistleblower Authority Act. Please find an explanation of the terminology used below.

### Whistleblower Authority Act

The Whistleblower Authority Act (Wet HvK) became effective on 1 July 2016. This Act sets out the options and protections of employees who want to report wrongdoing.

### Employee

An employee is a person who is or was performing labour for an employer, including before retirement, in a previous job, as a public servant or in a company, with or without an employment contract. This means that in the context of the Whistleblower Authority activities, self-employed professionals, volunteers, flex workers and trainees are also classed as employees.

### Employer

In the context of the Whistleblower Authority Act, an employer is any party or person for which a person is or was working.

### Maatschappelijke misstand

An event of wrongdoing with a social impact generally concerns a situation that involves several people, frequently occurs, and can have severe consequences.

Also, one or more of the following characteristics applies/apply:

- non-compliance with a regulation or legislation;
- public health hazard;
- risk for the safety of persons;
- environmental hazard;
- risk for adequate performance of a government organisation or company due to improper actions or omissions.

### Reporting procedure or whistleblower procedure

All organisations where fifty or more people work must have a reporting procedure or whistleblower procedure. This sets out how the employer deals with reported suspected or actual wrongdoing.

According to the relevant legislation, the reporting procedure or whistleblower procedure must at least set out the following:

- how an internal report is treated;
- the criteria to define wrongdoing (based on the legal definition);
- to what officer an internal report should be submitted;
- that the employer processes the report with full confidentiality if the reporter indicates that this is his/her wish;
- that the employee may confide in an advisor to ask for advice.

### Reasonable suspicion

If an employee is of the opinion that there is wrongdoing within the organisation where the employee works/worked, or has been confronted with wrongdoing in his/her work, the person may report the wrongdoing. The person must personally know or have observed signs of this wrongdoing. Reports based on rumours or other people's accounts are not accepted.

### Advice

An employee may receive advice from the Advice department of the Whistleblowers Authority if he/she has identified suspected or actual work-related wrongdoing. This advice is independent, confidential and free of charge. The Authority's advisors are never involved in investigations. They can only provide information about their advice to the investigators at the request of the whistleblower.

### Investigation

In some cases, an employee may request the Investigation department of the Whistleblowers Authority to conduct an investigation. An investigation may be conducted subject to fulfilling a number of legal criteria. The Investigation department first reviews if all formalities were completed, and if this concerns suspected or actual wrongdoing with an impact on social interests based on reasonable grounds. Subsequently, the Investigation department assesses if there is enough reason to start an investigation.

Among other things, this serves to assess if the request appears unfounded, or if there are any grounds that would justify not conducting an investigation. Investigators never give advice to whistleblowers. They are not involved in advice issued by advisors.

### Disadvantaging prohibition

The employer is not permitted to disadvantage the employee as a result of reporting wrongdoing. However, the employee must report wrongdoing correctly. Disadvantaging may include bullying, unwanted transfers, refusing a promotion, or termination of employment

## Colophon

This is a publication of the Whistleblowers Authority.

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