



HUIS VOOR  
KLOKKENLUIDERS

KNOWLEDGE & PREVENTION PUBLICATION

# The Reporting Procedure

Integrity in Practice

## The Reporting Procedure

# PREFACE

## 1.1 ABOUT THE DUTCH WHISTLEBLOWERS AUTHORITY

The Dutch Whistleblowers Authority (*Huis voor Klokkenuiders*) was established in 2016 and contributes to a culture of integrity in society. The Authority encourages and supports public authorities, semi-public institutions and companies in developing and safeguarding their integrity policies. In addition, the Authority annually provides advice to hundreds of individuals who suspect a wrongdoing.

The Authority also conducts detriment investigations, as reporting persons must not suffer any detriment as a result of their report. As a last resort, the Authority may also investigate alleged wrongdoing itself – for example, if no supervisory authority or competent authority has been designated, or if no proper investigation has yet been carried out by a specialised supervisory authority.

## 1.2 THE REPORTING PROCEDURE

Since the Whistleblowers Authority Act (*Wet Huis voor klokkenluiders*) came into force on 1 July 2016, employers with at least fifty employees have been required to have an internal reporting procedure. Following the introduction of the Whistleblowers Protection Act (*Wet bescherming klokkenluiders*, hereinafter: WPA) on 18 February 2023, employers are still required to have such a procedure in place.

This procedure allows employees to report suspected wrongdoing. In certain policy areas, employers with fewer than fifty employees are also required to have a reporting procedure – for example, in the financial sector. This brochure explains which organisations must have a reporting procedure and the minimum requirements such a procedure must meet.

## 1.3 HOW TO USE THIS BROCHURE

This brochure is intended to help organisations draft or revise their reporting procedure in such a way that it complies with the WPA. It is important not only to read this brochure, but also to study the relevant legislation. In addition, it may be useful to consult your own sector or umbrella organisation, which may offer its own example or model procedure tailored to your type of organisation.

In this brochure, 'they/them' is used to refer to a single person whose gender is unknown.

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## 2. SAFE REPORTING ENVIRONMENT

Employees are less likely to report anything if they do not feel safe at work, or if their employer or client does not focus on a culture of integrity and ethical issues. Therefore, it is crucial that this focus exists, so that employees experience a safe reporting environment. Having a reporting procedure is essential for this, but not sufficient.

A safe reporting environment not only enhances the effectiveness of the reporting procedure but also helps prevent harm to the organisation. This includes economic damage, unfair competition, environmental and health risks, waste of taxpayer money and reputational damage.

In an organisation with integrity, employees also experience greater well-being, motivation, job satisfaction and involvement. They are often more collegial and have more trust in their employer.

In an organisation with integrity, everyone is aware of the dangers of actual or potential wrongdoing. Everyone also wants to prevent such issues. If a wrongdoing does occur, the organisation is prepared to handle it well, managing both the issue and the reporting person(s).

### Tip!

Above all, view reports as an opportunity to improve the organisation. Remember that reporting persons are usually loyal and committed to their work. They often have to overcome significant barriers before making a report. Treat reporting persons well and ensure they do not suffer any detriment as a result of their report.

A well-functioning and integrated integrity management system is necessary for a safe reporting environment. The Dutch Whistleblowers Authority has identified seven components of integrity management, including 'leadership and strategy', 'values and principles', and 'structures and procedures'. A detailed description of all seven components can be found on the website of the Dutch Whistleblowers Authority ([www.huisvoorklokkenuiders.nl](http://www.huisvoorklokkenuiders.nl)). The Dutch Whistleblowers Authority's brochure *Towards an ethical culture* contains more information on working towards an organisation with integrity.

### Tip!

With the Integrity Assessment Tool (*IntegriteitsWijzer*) of the Dutch Whistleblowers Authority, an organisation can assess what is needed to further develop its integrity and work on a safe working environment.

### 2.1 BROADER APPLICATION OF THE REPORTING PROCEDURE

An organisation may choose to extend its reporting procedure – mandatory under the WPA – to also include reports of other integrity violations. Not all integrity violations are necessarily classified as wrongdoing. However, it is still important for an organisation to be aware of such violations. The more types of concerns employees can report through a single channel, the more beneficial this is for the organisation in the long run.

A broader application of the reporting procedure is both desirable and practical because:

- it prevents fragmentation of internal reporting policies;

- the organisation does not have to maintain and align multiple separate procedures;
- the procedure remains as simple as possible. Employees are generally more likely to report via a straightforward process than a complicated one;
- the organisation is able to intervene earlier and possibly prevent harm.

If an organisation chooses to adopt a single reporting procedure for both wrongdoing and other integrity violations, it is important to clarify that not all reports can or should be handled in the same way. The handling of wrongdoing is subject to different statutory and other requirements than the handling of other integrity violations. For example, with regard to integrity violations, there is no option to report externally right away. In addition, the Dutch Whistleblowers Authority cannot investigate these violations.

**Please note!**

If the organisation chooses not to adopt a single, broad reporting procedure for all types of integrity-related reports – and instead uses multiple procedures – make sure it is clear to employees which procedure applies to which type of report, and where they should go to file it.

## 2.2 OBLIGATIONS FROM VARIOUS CODES

The WPA requires employers to have a reporting procedure in place for reports of wrongdoing. In addition, various sector-specific agreements and codes of conduct may also require employers to establish a procedure for reporting certain types of conduct. Examples include:

- the Corporate Governance Code for listed companies;
- the Cultural Governance Code for the cultural sector;
- the Healthcare Governance Code for the healthcare sector;
- a variety of codes of conduct for the education sector.

Furthermore, new procedures and reporting channels may be introduced in the future in response to societal discussions about undesirable behaviour within and outside organisations. For this reason, the Dutch Whistleblowers Authority advises organisations to implement a single procedure and a single point of contact for reporting persons.

**Please note!**

If the organisation aligns its reporting procedure with various codes and obligations through a single (broad) procedure, ensure that the definitions used are consistent with these codes and obligations. For example, always specify which part of the reporting procedure a particular code or law applies to.

# 3. REPORTING PROCEDURE FOR WRONGDOING

Since 2016, employers with at least fifty employees have been required to have a reporting procedure for wrongdoing. This has not changed with the entry into force of the WPA on 18 February 2023.<sup>1</sup> However, more specific requirements have been outlined in the WPA. All relevant requirements for the reporting procedure are covered in this brochure.

**Tip!**

The procedure for reporting wrongdoing within an organisation is still often referred to as a 'whistleblowers' scheme. It is better not to use this term. There are various definitions of 'whistleblower' in circulation, and its use often carries negative connotations. This fosters scepticism and reluctance amongst potential reporters and often isolates them. Therefore, it is preferable to use terms such as 'reporting person' and 'reporting procedure' or their variants.

## 3.1 WHICH ORGANISATIONS MUST HAVE A REPORTING PROCEDURE?

All employers with fifty or more employees are required to have an internal reporting procedure. This applies to both the public and private sectors. For certain sectors (such as the financial sector), employers are also required to have a reporting procedure if they have fewer than fifty employees.<sup>2</sup>

**Tip!**

Consider collaborating with other organisations when drafting and implementing the reporting procedure. Other (smaller) companies in the same sector may be interested in working together and willing to share costs. This could include shared costs for (external) confidential advisers, integrity officers and investigative capacity.

**Tip!**

Even if an organisation is not required to have a reporting procedure, for example, because it has fewer than fifty employees, it may still choose to implement one. Should a wrongdoing occur, the organisation will be well prepared.

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<sup>1</sup> This obligation was also part of the Whistleblowers Authority Act (*Wet Huis voor klokkenluiders*), which came into force in 2016, and has since been replaced by the WPA.

<sup>2</sup> See Annex 2 of Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

## 3.2 WHO CAN REPORT?

The WPA defines a reporting person as “a natural person who reports or publicly discloses a suspected wrongdoing in the context of his work-related activities”.

A reporting person is therefore always a natural person – that is, a human being of flesh and blood. This means that legal entities – such as companies, foundations or government bodies – cannot be considered reporting persons under the WPA.

In addition, a reporting person is someone who, in the context of their work, reports or discloses a suspected wrongdoing. This person must therefore have a working relationship with the organisation to which the suspicion relates.

A reporting person may be an employee, meaning someone with an employment contract or official appointment, but this is not a requirement. A reporting person can be anyone who has a working relationship with an organisation.

This means a reporting person can also be a self-employed individual (for example, a consultant, freelancer, contractor or supplier). A board member, volunteer, paid or unpaid intern, or staff of a contractor or supplier can also be a reporting person. What matters is that the reporting person is performing, has performed, or is about to perform work for an organisation. A former employee or any other person whose working relationship has ended can also qualify as a reporting person. The same applies to job applicants and others whose working relationship has not yet begun. Even a shareholder can be a reporting person.

A person can only be considered a reporting person within the meaning of the WPA if they have a reasonable suspicion of a wrongdoing and can substantiate it. This means that there must be concrete and reliable indications of the suspected wrongdoing.

## 3.3 WHAT IS A WRONGDOING?

Every organisation encounters issues. Some of these may qualify as a wrongdoing within the meaning of the WPA. Wrongdoings fall into two categories:

- A breach of Union law: a breach of a regulation or directive of the European Union in specific policy areas.
- A societal wrongdoing.

### 3.3.1 BREACH OF UNION LAW

A breach of Union law refers to an act or omission that is unlawful or undermines the purpose of Union law. This concerns acts of the European Union – i.e. EU regulations or directives, or national legislation derived from them – within certain policy areas. A full list of relevant policy areas is provided in Annex 2 of the Directive.<sup>3</sup> Examples include environmental protection or the protection of personal data.

### 3.3.2 SOCIETAL WRONGDOING

A societal wrongdoing occurs when an act or omission affects the public interest. Such an act or omission must display one or more of the following characteristics:

- It involves a violation of the law or of internal rules established by the employer pursuant to a statutory provision.
- It poses a threat to public health.

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<sup>3</sup> See Annex 2 of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

- It poses a threat to the safety of individuals.
- It poses a threat to the environment.
- It poses a threat to the proper functioning of the organisation as a result of an improper act or omission.

Each case must be assessed individually to determine whether it constitutes a matter of public interest. However, the law makes clear that the public interest is at stake in any case if the act or omission affects more than just personal interests. Additionally, there must be a pattern, a structural nature to the issue, or the situation must be particularly serious or extensive.

Each report must be evaluated to determine whether it constitutes a wrongdoing within the meaning of the WPA.

## 4. CONTENT OF THE REPORTING PROCEDURE

In the reporting procedure, the organisation sets out how it handles reports of wrongdoing within the meaning of the WPA. The organisation is free to decide how to shape the procedure, as long as it complies with the statutory requirements. The most important aspect is that the procedure provides clarity about what reporting persons can expect when they file a report – so they know what they can rely on.

### 4.1 MANDATORY ELEMENTS OF THE REPORTING PROCEDURE

The following elements must be addressed in the reporting procedure:

- When an actual or suspected wrongdoing is deemed to exist.
- How the report will be handled.
- How a report can be submitted.
- To whom a report can be submitted.
- Who will handle the report.
- How anonymous reporting is facilitated (details to be further specified by the legislator).
- That the employee has the right to consult a trusted adviser.
- That the reporting person will receive an acknowledgement of receipt within seven days of submission.
- That the reporting person is provided with information on the assessment within three months of the acknowledgement of receipt, and where applicable.

This chapter covers all these elements. Where possible and relevant, 'building blocks' are provided that organisations can incorporate into their own reporting procedure.

### 4.2 WHAT CONSTITUTES ACTUAL OR SUSPECTED WRONGDOING?

The reporting procedure must state in which situations a wrongdoing exists according to the WPA. It must also describe what constitutes a suspicion of wrongdoing (see also Section 1.3). The statutory definition may be copied verbatim, but this is not mandatory – as long as it is clear what is meant by a suspected or actual wrongdoing.

## BUILDING BLOCK (OPTION 1 – STATUTORY DEFINITION)

A suspicion of wrongdoing is the reporting person's belief that there is a wrongdoing in the organisation where they work or have worked, or in another organisation with which they came into contact through their work, provided that the suspicion is based on reasonable grounds derived from information that the reporting person has acquired through their employer or arising from the knowledge that the reporting person has acquired through their work at another company or another organisation.

A wrongdoing is defined as:

- a violation or risk of violation of Union law, or
- an act or omission that affects the public interest
- a breach or potential breach of a statutory provision or internal rules that impose specific obligations and have been established by an employer under a statutory provision, or
- a danger to public health, the safety of individuals, the degradation of the environment, or the proper functioning of public services or an enterprise due to an improper act or omission.

The public interest is, in any case, deemed to be at stake if the act or omission affects more than just personal interests and involves either a pattern or structural issue, or if the act or omission is serious or extensive in nature.

## BUILDING BLOCK (OPTION 2 – AS USED IN THIS BROCHURE)

A wrongdoing can be divided into two categories: a breach of an EU regulation or directive in certain policy areas, also referred to as a breach of Union law, and a societal wrongdoing.

Union law is established in an EU regulation or directive or national laws or regulations derived from it. A violation of Union law is an act or omission that is unlawful or undermines its objective and is harmful to the public interest. A full list of relevant policy areas is provided in Annex 2 of the Directive, but examples include environmental protection and data protection.

A societal wrongdoing occurs when the public interest is at stake. A wrongdoing occurs when the act or omission has one or more of the following characteristics:

- there is a violation of the law or internal rules set by the employer based on a statutory provision;
- there is a threat to public health;
- there is a threat to the safety of individuals;
- there is a risk of environmental degradation;
- there is a threat to the proper functioning of the organisation as a result of an improper act or omission.

Each case will be assessed by {insert: independent officer responsible for following up on reports} to determine whether it constitutes an incident that affects the public interest. However, the law clearly states that the public interest is deemed to be affected if the act or omission does not relate solely to personal interests and either forms part of a pattern or has a structural nature, or if it is serious or widespread.

Each report must be assessed individually to determine whether it qualifies as a wrongdoing under the WPA. This reporting procedure is intended solely for the reporting of wrongdoings and, where applicable, related integrity issues. It is not intended for individual matters such as disputes (including employment disputes) between an employee and their direct supervisor.

### 4.3 HANDLING REPORTS

The law does not prescribe how an organisation should handle a report. However, it does require the organisation to clearly state in its reporting procedure which independent officer(s) will receive the report, and which independent officer(s) will be responsible for the follow-up.

The reception and the follow-up of a report may be assigned to different officers. Whether these tasks are performed by the same or different officers is at the organisation's discretion. Officers who receive and/or handle reports must be independent and possess the necessary expertise to carry out their duties effectively.

If a reporting person makes a report to someone other than the designated officer within the organisation, it must be forwarded to the designated officer as soon as possible.

#### 4.3.1 INTERNAL REPORTING CHANNEL

The officer to whom an employee can report a suspected wrongdoing depends on the structure of the organisation. There are various possibilities, such as the supervisor, a specifically designated officer, or a member of the Supervisory Board. It is important that the reporting channel is easily accessible, so that potential reporting persons know where to turn to and feel confident doing so. This helps to increase the willingness to report. In addition, it is essential that the officer receiving the report knows how to handle it appropriately.

#### 4.3.2 ORAL AND WRITTEN REPORTING

The law does not prescribe a specific format for an internal report. However, it does require that a report can be made both orally and in writing.

If a report is made orally, ensure that:

- the report is recorded in writing (by the person receiving it);
- the reporting person is presented with a copy of the written version of their report, which they may supplement or amend. Once they are satisfied with the written version, they must sign it;
- the written report is dated (this is also important for establishing any subsequent detriment);
- the report, where applicable, is forwarded to the person responsible for handling it as soon as possible. Indicate this timeframe as concretely as possible: the same day, the following day, or specify the actual date.

It is advisable to follow the same procedure for each report and to describe this uniform process clearly in the reporting procedure.

#### 4.3.3 CONFIDENTIAL HANDLING

The WPA requires employers to treat reports and the identity of reporting persons confidentially. The reporting procedure must state that the organisation guarantees this confidentiality. This means the reporting process must be designed in such a way that confidentiality is genuinely protected.

Confidential handling of reports increases the willingness of individuals to report. It also allows the organisation to investigate the matter calmly and confidentially, which contributes to resolving any wrongdoing more effectively and swiftly.

The individual who is the subject of the report (the 'person concerned') is also entitled to protection of their personal data. Their identity must therefore also be treated confidentially.

### BUILDING BLOCK

You can make a report to {insert officer(s)}. If you choose to do so in writing, please send an email to {insert email address}.

Would you prefer to make your report orally? Then you can call {insert telephone number} or visit {insert room number/location}.

[Add if applicable:] Your report will be assessed by {insert officer(s)}.

Confidentiality is mandatory for the officer(s). This means that your identity will not be disclosed to others without your consent, and that they will not discuss the report unnecessarily.

#### **Please note!**

The more people who are aware of the identity of the reporting person (and that of the person concerned), the greater the risk that the matter can no longer be handled confidentially. Make sure the reporting process is set up in such a way that the number of people involved in handling the report is kept to an absolute minimum.

## 4.4 ANONYMOUS REPORTING

The fact that a report is *treated confidentially* does not mean that it is *anonymous*. In the case of an anonymous report, the identity of the reporting person is not known. With a confidential handling of the report, the reporting person's identity is known, but only to as small a group as possible.

The WPA also includes the option of anonymous reporting. However, the specific procedure for reporting persons to report anonymously has not yet been worked out. This will be done at a later stage by means of a general administrative order (*Algemene Maatregel van Bestuur*). Once it enters into force, employers will be required to make anonymous reporting possible. Of course, organisations are free to offer this option even now.

### BUILDING BLOCK

Within {insert organisation name}, you are offered the opportunity to report anonymously. This can be done here: {insert link to system}.

## 4.5 RIGHT TO ADVICE

Reporting a wrongdoing can be quite complicated and often requires a lot from the reporting person. Additionally, it is not always without risks to make a report. Therefore, it is important for a reporting person to understand what they are getting into. The WPA gives the (actual or potential) reporting person the right to seek advice from a trusted

adviser. An organisation must mention this in the reporting procedure and also specify who the trusted adviser is (this is often the confidential adviser).

#### 4.5.1 OTHER ADVISERS

A reporting person can always seek advice from an external adviser, such as an adviser from the Dutch Whistleblowers Authority, a lawyer, a trade union legal adviser, a legal adviser from a legal expenses insurance company, or a company doctor. These suggestions can be mentioned in the reporting procedure.

### BUILDING BLOCK

You have the right to consult a trusted adviser about making a report. The trusted adviser for {insert organisation name} is {insert name + contact details of trusted adviser}. Of course, you are free to seek advice from an external adviser, such as from the Dutch Whistleblowers Authority ([www.huisvoorklokkenluiders.nl](http://www.huisvoorklokkenluiders.nl)).

#### 4.6 COMMUNICATION WITH THE REPORTING PERSON

Reporters of wrongdoing have often already gone through an entire thought process. They have often spent a long time deliberating and weighing various factors before daring to report a suspected wrongdoing. Transparency about the reporting process is the least an organisation can offer a reporting person. Therefore, the WPA requires that the reporting procedure specifies how internal reports will be handled, what information the reporting person can expect following their report, and the timeframe within which they will receive that information.

##### 4.6.1 PROCESS

The WPA requires that the reporting person receives an acknowledgment of receipt no later than seven days after the report has been submitted. It is advisable to include a copy of the report or a short summary of the report with the acknowledgment of receipt. This provides clarity and ensures that all parties involved have access to the same information.

Once a report has been received, the organisation must assess how to proceed. The reporting person must be informed as soon as possible – but no later than three months after the acknowledgment of receipt has been sent – of what will happen with the report. Even if the organisation decides not to act on the report, the reporting person must be informed of this and provided with the reasons for the decision.

A report may lead to an investigation. If so, it is important to inform the reporting where possible – especially once the investigation has been concluded. Be sure to communicate the main findings. This shows the reporting person that their report has been taken seriously and enables them to decide whether or not to take further action. When reporting persons are informed about how their report has been followed up, they are more likely to feel that the matter has been satisfactorily resolved.

## BUILDING BLOCK

Within seven days of submitting your report to {insert the name(s) of the designated officer(s)}, you will receive an acknowledgment of receipt. No later than three months after receiving the acknowledgment of receipt, you will be informed of the assessment of your report by {insert the name(s) of the officer(s) responsible for assessing the report}. If no further action will be taken, you will also be informed, and the reasons for this decision will be provided.

If applicable, add: If it is determined that an investigation will be conducted regarding your report, you will be informed. The research protocol {insert link to research protocol} outlines how {insert organisation name} conducts investigations.

## 4.7 OTHER OBLIGATIONS

An organisation must inform employees about the legal protection enjoyed by a reporting person and the option to report directly externally. This information does not necessarily have to be included in the reporting procedure itself, but it is the most logical place to do so.

### 4.7.1 LEGAL PROTECTION

An important part of the WPA is the prohibition of detrimental action. A reporting person who has made a report of wrongdoing in the proper manner must not suffer any detriment as a result. The organisation must inform employees about this right and ensure that no detriment occurs. If a reporting person believes they have suffered detriment, they can ask the Dutch Whistleblowers Authority to conduct an investigation into how they have been treated or can take legal action.

Furthermore, it may happen that the reporting person needs to disclose company secrets or reveal information that violates a confidentiality obligation. If the reporting person has reasonable grounds to believe that it is necessary to use that information for the report and makes the report in accordance with the law, they are allowed to do so. The reporting person cannot then be held liable by the organisation for any breaches or for making a report.

Finally, the WPA introduces what is known as the 'reversal of the burden of proof'. This means that in legal proceedings concerning detriment suffered by a reporting person, the court presumes that this detriment resulted from the report. In such cases, the organisation will have to prove that the actual or potential detriment suffered by the reporting person or another person is not the result of the report.

#### Tip!

The statutory prohibition of detrimental action applies only to reports of wrongdoing as defined in the WPA. However, an organisation may choose to extend this protection to other types of reports as well. Doing so can lower the threshold for reporting.

### What is detriment?

A reporting person is considered to have suffered detriment if they experience negative consequences within the organisation as a result of their report. Examples include involuntary transfer, denial of promotion or dismissal. Detriment may also take the form of bullying, exclusion, being ignored or intimidation. It is the organisation's responsibility to ensure that the reporting person does not suffer any detriment. This protection is not limited to a specific period of time.

### Protection of other involved parties

Other individuals involved in the report and those who support a reporting person – such as a confidential adviser, a trade union representative, or a colleague – are also entitled to protection against detriment from the organisation concerned. This helps prevent people from refraining from reporting due to fear that their colleagues or family members may suffer the consequences. It also ensures that others, such as the confidential adviser, do not hesitate to support the reporting person for fear of retaliation.

#### **Please note!**

The person about whom the report is made is also entitled to a fair and careful procedure following the report. It is therefore important to give due attention to how this person is treated.

### **BUILDING BLOCK**

If you report a suspected or actual wrongdoing based on reasonable grounds, you are protected against detriment. This means that you must not suffer any negative consequences from {insert name of organisation} as a result of your report, such as dismissal, bullying, or denial of promotion. This protection also applies to those who supported you in making the report, such as the trusted adviser and involved colleagues.

If you believe that you have nevertheless suffered or are suffering detriment, you may ask the Dutch Whistleblowers Authority to investigate the matter. You may also initiate legal proceedings. You must then be able to demonstrate that you made a report and that you have suffered a detriment as a result. In legal proceedings, the court will assume that the detriment resulted from your report. {Insert name of organisation} will then have to prove that this was not the case.

## 4.7.2

### **DIRECT EXTERNAL REPORTING**

The WPA allows reporting persons to report a wrongdoing directly to an external authority. This means that a reporter does not have to first report a suspected wrongdoing within their own organisation. A reporting person may instead go straight to a competent authority, such as an inspection service or supervisory authority. The competent authorities required to establish an external reporting channel for wrongdoing are designated by or under the law.

Some authorities are explicitly designated as competent authorities under the WPA. These include:

- the Netherlands Authority for Consumers and Markets (Autoriteit Consument en Markt, ACM)
- the Dutch Authority for the Financial Markets (Autoriteit Financiële Markten, AFM)
- the Dutch Data Protection Authority (Autoriteit Persoonsgegevens, AP)
- De Nederlandsche Bank N.V. (DNB)
- the Dutch Whistleblowers Authority (Huis voor Klokkenluiders, HvK)
- the Dutch Health and Youth Care Inspectorate (Inspectie Gezondheidszorg en Jeugd, IGJ)
- the Dutch Healthcare Authority (Nederlandse Zorgautoriteit, NZa)
- the Dutch Authority for Nuclear Safety and Radiation Protection (Autoriteit Nucleaire Veiligheid en Stralingsbescherming, ANVS)

An organisation may not, in any way, require the reporting person to report internally first. It is also not permitted to give the impression that the reporting person must report internally before going to an external authority.

#### Reporting to the Dutch Whistleblowers Authority

Reporting persons may therefore report directly via an external reporting channel of a competent authority. The Dutch Whistleblowers Authority also has an external reporting channel. This means it is authorised to receive reports of wrongdoing and to follow up on them. The Authority may forward a report to another competent authority if that authority is responsible for the relevant policy area. If there is no other competent authority, the Dutch Whistleblowers Authority will handle the report itself.

The Authority can only investigate work-related wrongdoing, not other types of integrity incidents. However, it will always provide a listening ear and guidance to anyone who turns to them with concerns about such incidents.

### BUILDING BLOCK

You may always report a suspected wrongdoing to one of the competent external authorities. You are not required to report it internally first. The following competent authorities have what is known as an 'external reporting channel' for receiving reports of wrongdoing:

- the Netherlands Authority for Consumers and Markets (Autoriteit Consument en Markt, ACM)
- the Dutch Authority for the Financial Markets (Autoriteit Financiële Markten, AFM)
- the Dutch Data Protection Authority (Autoriteit Persoonsgegevens, AP)
- De Nederlandsche Bank N.V. (DNB)
- the Dutch Whistleblowers Authority (Huis voor Klokkenluiders, HvK)
- the Dutch Health and Youth Care Inspectorate (Inspectie Gezondheidszorg en Jeugd, IGJ)
- the Dutch Healthcare Authority (Nederlandse Zorgautoriteit, NZa)
- the Dutch Authority for Nuclear Safety and Radiation Protection (Autoriteit Nucleaire Veiligheid en Stralingsbescherming, ANVS)

You may also contact the Dutch Whistleblowers Authority at any time for advice on reporting or the reporting process. You may furthermore request the Authority to conduct an investigation into your treatment following the report.

## 4.8 MAKING THE REPORTING PROCEDURE AVAILABLE

The purpose of the reporting procedure is, first and foremost, to inform employees about how to make a report and how the organisation will handle it. The procedure must therefore be made available to all employees in writing or electronically – ideally via the intranet. In addition, the procedure must be easy to read and understand for all employees.

An organisation may also choose to make the reporting procedure accessible to others who are working for, have worked for, or intend to work for the organisation. This includes former employees, interns, job applicants and hired employees. In that case, it may be helpful to publish the reporting procedure on the organisation's website.

### **Tip!**

Make sure the reporting procedure is easily accessible to employees. Access rights and permissions may hinder the visibility and accessibility of the procedure.

## 5. INTRODUCTION AND IMPLEMENTATION OF THE REPORTING PROCEDURE

Once a reporting procedure has been drafted and made available, it must also be implemented properly. The procedure will only function effectively if it is well embedded within the organisation. In addition, everyone working for the organisation must know where and how to make a report.

### 5.1 INVOLVEMENT OF THE WORKS COUNCIL

The works council has the right of consent when adopting and amending reporting procedures. This means that the works council must first approve the reporting procedure before it can be introduced. Therefore, it is advisable to involve the works council early in the process of drafting and amending the reporting procedure.

The works council is familiar with the workplace culture and plays an important role in ensuring the integrity of employees. If the works council has been involved in the creation of the reporting procedure, the likelihood of its approval increases. Furthermore, the procedure will likely have broader support and greater visibility within the organisation.

#### 5.1.1 MONITORING OF THE REPORTING PROCEDURE

The employer is required to provide the works council with information on the social policies it is implementing, at least once a year. This must also include the impact of these policies on different departments and job categories. This therefore applies to the reporting procedure as well. Additionally, the employer must inform the works council annually about the social policies it plans to implement in the coming year, including expectations for the reporting procedure and any developments it foresees.

#### 5.1.2 NO WORKS COUNCIL

If an organisation has not set up a works council or employee representation – and is not obliged to do so – the WPA stipulates that, when adopting the reporting procedure, more than half of the employees must agree to it. This is not required, however, if the content of the reporting procedure is laid down in a collective labour agreement.

### 5.2 COMPREHENSIBLE REPORTING PROCEDURE

It is important to communicate clearly about the reporting procedure. Employees need to know what the procedure is for and where to find it. They must also be able to understand it. That is why the form, tone and length of the procedure should match the organisation's culture. The works council can assist by reviewing the procedure critically.

In many cases, clarity for employees is more important than a legally complex text. If certain concepts are legally difficult, it may help to provide examples. Consider whether the procedure could be made clearer, for instance through a flowchart, summary, infographic or short animation.

**Tip!**

Draw attention to the reporting procedure during onboarding, when taking an oath or pledge, or during (introductory) training sessions. Also refer to it in the code of conduct. This ensures that everyone working for or joining the organisation becomes familiar with the reporting procedure. Regularly raise awareness of the reporting procedure and of integrity more generally.

## 5.3 REPORTING AND FOLLOW-UP

It is essential to the proper functioning of the reporting procedure that employees trust the organisation to value their reports and to handle them appropriately.<sup>4</sup> This is especially important in cases where an investigation must be conducted. An investigation protocol can help (see the brochure *Internal Investigation* for more information).

**Tip!**

When a report is made, the organisation collects information that falls under the scope of the General Data Protection Regulation (GDPR). Personal data must be processed with care and in accordance with the GDPR and the Dutch General Data Protection Regulation (Implementation) Act (*Uitvoeringswet AVG*).

### 5.3.1 INVESTIGATION PROTOCOL

It is up to the organisation to decide whether an investigation will be launched following a reported suspicion of wrongdoing. The organisation subsequently takes a position on the matter. A good investigation protocol is essential for a thorough and proper investigation into a suspected wrongdoing. Such a protocol outlines various aspects relevant to conducting an investigation, such as powers, responsibilities and investigation methodologies. It should also include communication procedures with employees and the media during and after the investigation. Additionally, the rights and obligations of all parties involved in the investigation must be clearly defined.

It may be helpful to include the investigation protocol (or parts thereof) in the reporting procedure. This is not a statutory requirement. The brochure *Internal Investigation* provides guidance and tips on how to conduct an internal investigation.

**Tip!**

Ensure that the organisation communicates effectively with the reporting person about the follow-up actions taken regarding the report. This often helps reduce stress during what can be a tense period. It also provides an opportunity to identify whether any form of detriment is occurring.

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<sup>4</sup> The study *Melden met succes* (Reporting successfully) of Utrecht University:  
<https://www.huisvoorklokkenluiders.nl/Publicaties/rapporten/2022/09/15/succesfactoren-in-melden-van-interne-misstanden-snel-zorgvuldig-deskundig-en-open>

### 5.3.2 MEASURES

If the reported suspicion of wrongdoing proves to be well-founded, the organisation may consider taking appropriate measures. These may include employment-law sanctions against the person responsible for the wrongdoing. It is of the utmost importance that any measures taken are fair and proportionate. Disproportionate measures can undermine trust in the organisation and reduce employees' willingness to report future concerns.

### 5.4 EVALUATION OF THE REPORTING PROCEDURE

It is crucial to regularly evaluate whether the reporting procedure is functioning properly. Adjustments may be needed. Additionally, it is important to ensure that all employees remain informed about the existence of the reporting procedure.

**Tip!**

Ensure that all officers involved in handling reports have the opportunity to regularly share knowledge and experience. However, make sure that discussions about reports are held in general terms to protect confidentiality.

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