Whistleblowing
In the Netherlands

Cross Curricular Project
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Authors
Philippe Jochems
Sjors Melman

Supervisors
Anselma Gietelink
Harm Jan Langelaar

Subjects
Management & Organisation
Economics

Rijnlands Lyceum
Van Alkemadeelaan 2
2171 DH Sassenheim

In cooperation with

[Logo]
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Preface

As part of our curriculum, we get the opportunity to make a cross curricular project. This type of cross curricular project is a problem based research or investigation with the aim of improving a social problem. This can range from reducing power consumption in a car to setting up a business in which the market is not fully saturated.

The aim of this project is diverse and depends on your own way of writing this paper. Improving professional collaboration, knowledge and understanding on the subject, innovative solving and academic writing skills are skills which can be acquired and required during our research. Acquiring these skills is the reason for the school and Ministry of Education, Culture and Science choosing for this way of examining us.

This research accounts for 33% ED (Examendossier) and makes up one subject together with Science for Public Understanding and Social Studies. The assessment rubric can be found in the appendix. Since one of the students is following bilingual education, we are obliged to write this project in English.

We have chosen the topic whistleblowing, since this topic is a mix between the interests of both partners: the meat processing industry of Philippe and the labour council or advisory bodies of Sjors. Whistleblowing in the Netherlands knows some interesting meat processing scandals, including whistleblowers, and also the labour council plays an interesting role in the assistance and support of whistleblowers. We also thought about a solution to set up an organisation which combines all aspects of the problem, where whistleblowers could go to for support. This possibility is also looked at in this paper.

Since this research is called a cross curricular project, it deals with specific subject(s) as well. The writers of this paper have chosen for the subject Management and Organisation (in combination with Economics) which is this year taught by Mr van der Graaf. Our tutor for this specific project is Anselma Gietelink Hoogkamer and she will also be assessing us in February. In order to streamline and assess language and structure, we have been appointed a language supervisor: Mr Langelaar. Whistleblowing can be attached to the subjects, since it deals with personnel, understanding organisation structures and effects it has on publicity and marketing.

At 20th of March 2015, a public presentation will be held at the Rijnlands Lyceum Sassenheim in order to present our research and conclusions. This presentation is at a plaza where all other CCP's are presented as well. This research paper will also be published on the website of the Expertgroep Klokkenluiders – www.expertgroepklokkenluiders.nl. This research will be subject to assessment at the 18th of February 2015.

We would like to wish you a pleasant time reading this research,

Philippe Jochems  
Sjors Melman  
whistleblowerpws@gmail.com
“whistleblowing faces difficulties given the general reluctance to report such acts within one’s own organisation, and fear of retaliation”

Edward Snowden 2013

“the truth is coming and it cannot be stopped”

Transparency International

“whistleblowing is the tool to fight corruption”

2 http://euobserver.com/justice/121873
Readability Guide

In order to guide the reader of this paper, we offer a reading guide. In the coming paragraphs, we will explain the structure of this paper, the red thread and terms which might raise questions.

To begin with the structure, this paper is divided into five chapters. Chapter one elaborately discusses the issue at hand, the organisations involved, the problems along whistleblowing and an overview of the past - What is the current situation? A true theoretical research chapter. Before chapter one begins, a preface and an introduction are included. The preface will explain the set-up of this research and the position of the researchers. The introduction will explain the current situation as is presented in the news and some general context.

In chapter one, the term whistleblower starts to pop up multiple times. The term whistleblower deals with anyone planning to report a misconduct or anyone actively submitting a report of misconduct. This states the broad definition of the term whistleblower in our research; we do not make a difference between people reporting a misconduct or people submitting a suspicion of misconduct. Furthermore, whistleblowing can be about personal related issues, such as sexual harassment or physical abuse, but it can also deal with broad, social issues, such as threats on the environment or public safety (term: social issue). Moreover no linguistic difference is made between someone who internally reports a misconduct or someone who publically states a misconduct (the actual definition of a whistleblower). Our interpretation of the term equals the common interpretation among businesses and governmental institutions.

To support the theoretical research of chapter one, chapter two explains the practical side of whistleblowing. The meat processing industry will be discussed, since there have been some fraud cases in that particular field of industry - What are examples of whistleblowing?

The government is also aware of the problem and also considered: how can we improve on the position of whistleblowers in the future. In chapter three we must also look at law proposals and other future plans which deal with whistleblowers - What are the ideas of the government?

Companies themselves can also have a great impact on the position of whistleblowers: the whistleblowing policy. In chapter four, we discuss, outline and explain a (solid) whistleblowing policy. That whistleblowing policy can also be part of the solution - How can we improve the whistleblowing policy?

The answer to our thesis question will be based on conversations with experts and research on their publications. In order to fully answer the thesis question, we will investigate the different solutions in chapter five, along with our own innovative ideas and the ideas of other nations - What could be possible solution?

All those subquestions divided over the five chapters will be the research to answer the thesis question - How can we improve on the position of whistleblowers in the future? There will be no list of terms and definitions, since (nearly) all terms and organisations are explained in the first chapter. Furthermore, sources can be found at the bottom of each page. Attached, you will find a list of all the sources used. Other attachments, such as communication or meetings with experts or external organisations, include a short summary and description. This brief reading guide serves as a red threat and can be used to simplify reading!
Introduction
Introduction

Since Edward Snowden gave the world an eye-opener as whistle blower in June 2013, the term whistleblower got a new definition. Since then, whistleblowers are not just able to provoke a discussion around a company or organisation, no, they are able to provoke a worldwide debate which affects every single human; they are able to set off a chain reaction in which every single chain increases the worldwide awareness; they provide more proof for scandals and makes undisclosed operations reach the daylight. However, not just revealed intelligence or government operations spur disputes, also simple meat processing companies make the headlines by whistleblowers, claiming the meat is not authentic.

With deep regret, we all know whistleblowers are not seen as heroes or angels by everyone. Especially the companies, organisations or governments whose secret activities are revealed by those former named employees, do not seem to enjoy the existence of them. Snowden has to fear for his life, his belongings and his relatives, and he has been taken away his freedoms. Due to all this trouble whistle blowers have to deal with, colleagues are less likely to imitate them. This decreases the transparency of organisations and makes scandals continue on until some is brave enough to step up.

As mentioned, the meat processing companies have reached the headlines. In this research paper, some meat processing companies will be looked at. Especially companies which have had or are having problems concerning the governance of those companies. Whistleblowers are common in the meat processing industry and this sector will serve as an illustration to the theoretical research. The meat processing industry scandals have been our motivation and inspiration to research the topic of whistleblowing.

The moral discussion, whistleblowing, along with the financial, judicial, commercial and personal consequences, raises a thesis question we are eager to explore on: how to improve the position of whistleblowers in the future. With the help of the meat processing industry scandals in our own country, we are going to research this thesis question. Even though we focus on the whistleblower - the employee - we also realise and consider the employers' wishes. Along with subquestions ranging from: what are innovative solutions, to what is the Sarbanes Oxley Act (all the subquestions are discussed in the reading guide), we believe we are able to offer you a clear explanation of the issue and provide you with possible solutions.3

The importance of those whistleblowing is vital. It does not only directly solve scandals and misconducts, it also diminishes unjust competition or advantages, decreases corruption and

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black money laundering, benefits the government due to new fines or unpaid taxes, improves transparency, secures the environment, informs defence and security organisations and most of all protects and benefits us: the citizens. Whether it is tax reduction or safer nuclear reactors due to whistleblowing, it serves the greater good and collective property. Lastly, whistleblowing makes this world a more honest and just society, in which morals, standards, norms and values are protected.

Ultimately, transparency, justice, constitutional rights and knowing the truth is all we want. Without brave men such as Edward Snowden, we would not have all that. Of course there might be a limit to being transparent: Edward Snowden might have disclosed too much top-secret information, however the imposed punishments are doubtful. This limit is currently debated on by experts on the topic. We already know that government lacks legislature on the topic and that whistleblowing policies are not waterproof, but those assumptions need to be funded with practical evidence. All in all, we need to strive for a better global society and system in which all those latter named desires are able to be pursued; where whistleblowers can fearlessly say what they want to say and in which organisations can retain their reputation and are open-minded to whistleblowers. Companies need to see the benefit of those employees and must understand that solving it before the media jumps in is always the best solution. “A solution for all”: a discussion without aversion, but with interest in each other’s thoughts and beliefs.
Chapter 1

What is the situation right now?
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  Whistleblowing policies
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Subquestion 6: what are the other/overarching possibilities for potential whistleblowers?
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  Hotlines
  Labour- and sector organisations

Subquestion 7: what is the ultimate last resort?

Conclusion
  General overview of steps for whistleblowers
  Internal possibilities
  Other/Overarching possibilities
  External possibilities
Chapter 1 - What is the situation right now?

The whistleblower problem uncovered and current solutions explained

Introduction

Let us start with the official English Business definition of whistleblowing:

"a person who works for a company or organization that tells an authority about something illegal happening within the company or organization" ⁴

In this research rapport, we use the same definition as above, however we refer not just only to employees stating it in public, but also employees who are anonymously stating it internally. This free interpretation of the word is commonly done in the business sector.

The news offers us with a massive amount of stories about whistleblowers who have not been treated decently. Employees losing their job, workers who are afraid to go to work or are not willing to speak up as they are threatened. We would like to know how such a distasteful business is allowed to be taking place in this modern society. When reasoning, we expect governments and companies to be handling hand in hand on the issue, with solid and harsh regulations.

Just typing in whistleblower.org⁵ will provide you with United States of America’s National Whistleblowers Centre. At this website, an advertisement is published for the book 'The Whistleblower's Handbook'⁶ with a subtitle stating: 'A step-by-step guide to doing what’s right and protecting yourself'. This sounds like whistleblowing is not just a simple achievement and might cause a threat or danger to you. But why do we need this book? Is this a metaphor for what is happening in the world? As part of our research on the issue whistleblowers, we are going to investigate the theoretical aspect of this problem by figuring out what governments and companies have stated in the past in order to deal with this issue and by looking at what the possibilities are for whistleblowers in case they want to speak up.

In a nutshell, this is what subquestions 2 through to 7 are about: Besides the problem for whistleblowers to find a beginning in this overwhelming supply of helping organisations, we want to know where the end lies. If talks with your direct supervisor failed, you climbed up to your VPI (confidant) or member of the Board. After those internal possibilities, you started looking to find helping external organisations, such as the Adviespunt voor Klokkenluiders. Along with that, you got some information from your overarching labour organisation or branch organisation. With still no sign changing at the organisation you are working at, you might have decided to report your suspicion of misconduct to one of the researching bodies, such as the OIO

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⁴ http://dictionary.cambridge.org/dictionary/business-english/whistle-blower
⁵ http://www.whistleblowers.org/
⁶ http://www.whistleblowers.org/
Chapter 1 - What is the situation right now?

or FIOD (governmental researching bodies). If those researching bodies did not apply to you, you might have submitted your report to one of the hotlines or private detectives. In the end, if you case is still not solved or discussed, there is a last resort. This last resort is discussed in subquestion 7. This short summary is a guideline for the immense amount of regulations, organisations and solutions which whistleblowers encounter during their process of being a whistleblower.

The most important note to whistleblowing, which will be repeated over time in this paper, is the great preference of organisations and government that whistleblowers only look for external possibilities if they have extensively discussed this matter within the organisation. The reason for this preference is the great financial, reputational and moral disadvantage of whistleblowing in public or of officially investigating the issue.

Subquestion 1: what problems are related to whistleblowing?

An analysis of the issue, is the first thing we need. Shortly put: what is the problem? Why can whistleblowers not just do their thing in serenity? We will focus on the Netherlands, since we are closely connected to this culture. Furthermore, making it a worldwide based project would make it too vague, since every country has adopted its own legislature.

According to the research rapport of the organisation consult company Berenschot, only 20% of whistleblowers have a positive experience with whistleblowing. This shocking number is an argument on its own to hesitate to start whistleblowing. And ultimately, that is the result of the problem: the hesitation to start whistleblowing. But what causes this?

First of all, employees are afraid of economic consequences, such as losing their job. During these economic unstable times, people are dependent on their employer. Especially people from abroad who came here just for work, do not want to mess with their certainty of having a job. Complaining, addressing a dark situation or reporting bullying will affect the reputation of a company and might interfere with the company’s policies. Management has, legitimate or not, reasons for not appreciating this. When the company or government department you are working at does not have a whistleblowers policy, they might fire you. This risk is to be taken when reporting these misconducts. In order to affirm this problem: according to the investigation of Berenschot we mentioned earlier, 28% of the whistleblowers in the private sector was fired or quit their job because of the reported abuse. This does not even include the other types of retaliation which are possible (e.g. no promotion or vacation granted).

Secondly, there is no real reward for whistleblowers when they succeed. When they report the misconduct, there is no money, promotion, CV status or achievement linked to it. When no reward is linked to it, employees are more likely to keep it below the radar and not talk about it.

Subquestion 7: what is the situation right now?

The employee will always balance interests and risks. This causes the problem in the company to continue and go on until someone is brave enough to do so.

On top of that the system does not provide full anonymity. When reporting something to confidential staff member, their manager can easily ask/force them to tell who submitted the rapport, without you knowing it. Therefore, your social position at work might turn into a poor condition, in which your colleagues will treat you differently, as they do not believe it is elegant of you to submit a rapport. Some colleagues are also afraid that whistleblowing might result in a department to disappear or to be under great surveillance. This weakened social position affects your personal life and adds up along all the other problems whistleblowers have to deal with. According to the same research of Berenschot, 30% lost self-esteem/confidence and 34% was socially excluded in the public sector.

Moreover, the anonymity is not respected by all companies. When someone submits an anonymous rapport, the company rejects the rapport, as it could be made up or submitted by anyone: they want to see a name and legitimacy. This forces whistleblowers to disclose their name. The same social consequences apply as mentioned in the previous paragraph.

To add to that: a frequently used whistleblower policy contains a slightly subjective element. In the structure drawing below, you can clearly see the subjectivity:

8 Flowchart Sjors Melman
Chapter 1 - What is the situation right now?

The official procedure suggests that you submit your complaint to the management. However the management does not want to handle all those cases, due to time constraints and other interests. Therefore they, in the Netherlands, hire a so called "vertrouwenspersoon", a confidant. This member of staff is paid, chosen and directed by the management. The same management which the employee is whistleblowing about. The staff has the job to judge the validity of the complaint/rapport, however this process is highly influenced by the position of the confidant. This interesting structure of an organisation also contributes to the problems around the whistleblowing industry. Also the Expertgroup Whistleblowers Netherlands explain in their publication (Zwartboek)\(^9\) that the confidant is in theory objective, but in practise commonly a side job for a regular employee, making him/her subjective. (This structure drawing is a drawing of the whistleblowing policy of Van der Zwet Accountants and Advisors\(^10\), it says: "Vertrouwenspersoon: mevrouw E.J. L****, die door het bestuur is aangewezen om als zodanig te functioneren." meaning: Confidant: miss E.J. L****, who is appointed by the Board to obtain this job. This is just an example, a lot of other policies function in the same lines).

But besides the current job you have, also your future career lies in uncertainty. Companies knowing about your ‘whistleblowing adventure’ at another organisation will make them reluctant to give you a job. The so called “blacklisting” is of course not openly stated by any company and usually it happens in an unwritten manner, therefore no facts are available. This is caused by their fear that the same will happen at their organisation: a fear for reputation contamination. The same statistics of Berenschot point out that 37.9% of the whistleblowers in the public sector have experienced a negative effect on their career possibilities in the future. This astonishing number is not just a number to have concern on, but also a number which increases the problems and reluctance around whistleblowing.

Moreover, there is an extensive amount of organisations and possibilities for whistleblowers that are in the need of help. Due to this overwhelming stream of organisations, whistleblowers are not able to see the clear picture and miss out on the information they actually need. All those organisations are discussed in subquestion 2 of this chapter. When reading it, you will soon realise the ‘overflow’ situation.

Lastly, when whistleblowers want to fight for justice and take it a step further by addressing the case in court, their chances are slim, as they have to deal with (multinational) companies with a lot of money and lawyers, who are desperate to turn the chances in their favour. Therefore it is an entire company and a group of top class lawyers against an individual supported by an affordable lawyer. This difference in balance of power and money causes (potential) whistleblowers to re-evaluate their willpower to fight for their justice. Furthermore, bringing a whistleblower case to court (practically) does not happen in the Netherlands, but more in the USA. The position of the Openbaar Ministerie (Public Prosecution Service) will be discussed in the coming subquestion.


WHISTLEBLOWER-PWS@GMAIL.COM
To conclude this subquestion, let us list all the struggles which make the life of whistleblowers hard which we came across when researching this issue:

- Whistleblowers are afraid for retaliation and their job (economic consequence)
- Whistleblowers do not get any clear reward for whistleblowing (economic consequence)
- Not all systems provide full anonymity, which changes your social position at work (social consequence)
- Not all companies respect/accept anonymity, forcing them to disclose their identity (social consequence)
- A common whistleblowers policy contains a subjective and potentially corruptive element (ineffectiveness problem)
- Future career opportunities become slimmer as companies are reluctant to employ whistleblowers: blacklisting (economic consequence)
- There is an overflow of organisations which want to help whistleblowers, which increases the bureaucracy and ineffectiveness (practical problem)
- The balance between the power of companies and individuals judicially seen (in court), makes it difficult to make a go of it for those whistleblowers (power balance problem)

This list of problems or consequences for whistleblowing is something we have to take into consideration when trying to come with solutions.

**Subquestion 2: which existing external organisations are related to whistleblowing?**

Seeing the fact that whistleblowers can obtain a national or sometimes an international platform and thus reaching beyond the borders of the company or organisation, the government needs to take an active position. However there lies a huge difference in how governments view the situation: the United States of America\(^{11}\) looks at it as a way to gain something for the government. Take for example tax fraud, which would mean they will receive more taxes if a whistleblower gives information about it to the government. Consequently, the whistleblower can get 10 - 30 % of the sanctions to be ordered, if the amount of sanctions amounts to more than 1 million dollars. In this way, both the government and the whistleblower view the act as valuable. In the Netherlands, you cannot gain money as whistleblower in that way, since the Netherlands views a whistleblower more as a problem to be discussed in a company or organisation itself.

In order to see what the government of the Netherlands or any other independently set-up organisation has done to deal with the situation of whistleblowers, we have to list an extensive amount of organisations, agencies, inspection organs, hotlines and authorities. We will generalise all the regulations and plans to the different possibilities whistleblowers have:

\[\text{http://www.sec.gov/whistleblower}\]
Chapter 1 - What is the situation right now?

Adviespunt Klokkenluiders - Advice Centre Whistleblowers Netherlands\textsuperscript{12} \textsuperscript{13}  

The problem we are investigating in this paper, might become judicially complicated for employees who are not willing to put so much time in it. In such cases, the Adviespunt might come in useful: they provide free advice for all Dutch workers who are willing to or already practise whistleblowing activities. They provide (potential) whistleblowers with information about other organisations or authorities, about whistleblowing policies in their organisation or help you to find lawyers or other judicial help. However, this organisation cannot investigate, do research, be a link between your company and you, support you financially nor represent you judicially. Therefore this advice centre is limited in its effectiveness.

Nationale Ombudsman - The National Ombudsman\textsuperscript{14}  

The National Ombudsman\textsuperscript{15} is the highest authority when discussing complaints about the government. Therefore the National Ombudsman can only help whistleblowers who are civil servants. The National Ombudsman does not have the authority to prevent civil servants from dismissal or retaliation, however he can secure the employment status during the research. He does have an informal power to talk and negotiate with the government, since he is the highest authority when dealing with complaints. Overall, the National Ombudsman can most effectively be used to talk with the government, however he cannot help you in any other clear sense.

Onderzoeksraad Integriteit Overheid - OIO - The Council for Investigation in the Public Sector (OIO)  

The way the government deals with whistleblowers is different from how the private sector deals with it. Multiple options are available for employees in the public sector, such as the Onderzoeksraad Integriteit Overheid (OIO)\textsuperscript{16}. The researching body investigates the legitimacy of the complaint/rapport of the whistleblower. This investigation can take up to a whole year. When this investigation is done, the OIO can call for a hearing. The moment the entire research is done, the OIO decides if the rapport of the whistleblower is well-grounded and just, after which it informs the department of the government with an advice. The government can then decide their stance on it. It basically must agree with the result of the investigation of the OIO. If they are not willing to agree, they will

\textsuperscript{12} http://www.adviespuntklokkenluiders.nl/klokkenluider  
\textsuperscript{13} https://www.publeaks.nl/adviespunt-klokkenluiders.html  
\textsuperscript{14} https://www.nationaleombudsman.nl/  
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\textsuperscript{16} http://www.onderzoeksraadintegriteitoverheid.nl/melden/veelgestelde-vragen/#c121
have to motivate their answer. The effectiveness of this body is quite high, since it has the knowledge, expertise, funds and power to perform an independent research. The implementation of this idea in the private sector can be considered. However, according to the Rapport of Berenschot\textsuperscript{17} (rapport explained in previous subquestion), the OIO deals with a clarity problem: the OIO does not have a clear view of how to interpret the rules or its own position. Furthermore it is relatively unknown for people. There have not been taken any steps, since the rapport is only released in July 2014.

Openbaar Ministerie (OM) - Public Prosecution Service (OM)\textsuperscript{18}

Despite the fact the OM deals with justice and injustice, you cannot go to the OM as whistleblower or to bring up a whistleblowing case. However this is not put down clearly by the OM and some rapports actually claim you can visit the OM. As you can presume, criminal cases of a high degree which involve whistleblowing can of course be discussed in court. The procedure you normally follow when wanting to have an official investigation, is to go to the local authority or local police. In the appendix, you are able to find our question we submitted to the government, in order to impose clarity upon the position of the OM. Unfortunately, we received an answer that the government is not willing to answer this question, due to the overload of questions from students.

However, we managed to get into contact with Ingrid van Rooijen, owner of a HRM advisory company and senior advisor at the Public Prosecution Service of the Netherlands\textsuperscript{19}. She was willing to reply to us and gave a general overview of the position of the OM in this issue. To summarise, she mentioned that the whistleblowing issue is not an issue of the OM and the OM does not have any experts, knowledge or departments on it, since it belongs to internal labour legislation. Things will only get interesting for the OM if any criminal case can be linked to it, so if there have been criminal violations. This means that the OM does indeed not play an active part in this issue, but only if the issue escalates. Also the OM can play a role if the organisation and the employee are in a conflict with each other.

Besides the normal criminal case, if you would like to impose a criminal investigation concerning money, tax, fiscal or financial fraud, you are able to contact the FIOD\textsuperscript{20} (Fiscale Inlichtingen en Opsporing Dienst - Fiscal Prosecution Service). This governmental department of the tax administration can not only investigate, but also punish and correct the organisation if needed.

\textsuperscript{18} https://www.om.nl/vaste-onderdelen/zoeeken/?zoekterm=klokkenluiders&zoektab=site&zoekensortering=Num
\textsuperscript{19} https://www.linkedin.com/in/ingridvanrooijen
\textsuperscript{20} http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_funcies/prise/organisatie/taeken/belastingdienst_fiod/belastingdienst_fiod
Authorities and Governmental Inspection Institutions

Every branch of labour, such as education, mining and healthcare has its own governmental inspection institution. This institution strives for a uniform quality throughout its department. This quality can be maintained by examining statistical and financial reports, but also by physically inspecting the organisation. To add to that, the financial sector and health insurance sectors have their own 'authority' which functions like a Inspection Institution, however, they focus more on laws and competition instead of quality. The parallelism is the possibility for people (whistleblowers) to submit a suspicion of fraud or misbehaviour of the organisation. Therefore those two kinds of organisation contribute to the possibilities for whistleblowers.

Expertgroep Klokkenluiders - Expert Advice Group Whistleblowers

The Dutch Expertgroup of Whistleblowers is an initiative of multiple ex-whistleblowers who have a wide range of practical experience on this subject. The complete independent, self-financed and non-profit organisation offers legal aid and support during the complicated process of reporting abuses or suspicion of abuses (in this case abuse does not mean physical abuse, but any abuse, fraud or misbehaviour in an organisation which whistleblowers report on). Furthermore, it offers psychological and social guidance if asked for. The entire organisation is based on voluntary use, meaning it is optional thus not obligatory. Besides the guidance and support for whistleblowers, the organisation offers governmental publications, news items and their own recommendations related to the subject whistleblowing. This makes the extensive amount of data on the web easy and concise to read for amateurs in the field. All in all this initiative contributes to the possibilities for whistleblowers. (see Attachment 4C for the meeting with the Expertgroep)

22 http://www.afm.nl/nl/consumenten/over-AFM/meldpunt.aspx
24 http://expertgroepklokkenluiders.nl/
Overview of external possibilities for whistleblowers

In order to conclude this subquestion, we offer a chart which classifies all external organisations to which whistleblowers can go. This diagram backs up the problem stated in subquestion 1: the overflow of organisations which offer help to whistleblowers.

*Hotline: a so called "meldpunt", where you are able to submit your complaint, suspicion of fraud, or something alike.*
Subquestion 3: What is the role of companies and organisations* themselves?

Besides external organisations which offer advice, support, financial aid or execute an investigation, the Dutch Poldermodel\textsuperscript{25} actually subscribes a slightly silent and more introvert procedure: discuss the problem internally. This internal discussing does lead to problems which are stated in subquestion 1, however theoretically seems to be the best and most effective procedure. Companies prefer this route as it prevents damage to image or reputation and costs the least amount of money. Furthermore, it allows them to do it on their way, since it is within their own organisation (this often causes problems at the same time for the whistleblower). As mentioned in subquestion 1, the term 'whistleblower' only refers to externally reporting misconduct, however we use the term for internally addressing problems as well. In this subquestion, we are going to research the obligations which organisations or businesses have to obey to and which actions companies have chosen to implement on voluntary bases.

* The words businesses, organisations and companies are used interchangeable [the private sector]

Obligations for companies/organisations according to rule of law

Maybe it goes without saying that the government makes up certain rules for companies to adhere to in cases such as whistleblowing. However the Netherlands has not taken those steps yet, which is quite peculiar. The government is aware of all the cases in which companies have disadvantaged the whistleblower or don’t even have a whistleblowers policy: despite those problems, no regulations for normal businesses or organisations are taken up in the rule of law. Only big businesses fall under a certain regulation, which is discussed further on in this subquestion.

Vennootschappen - Public Limited Liability Companies\textsuperscript{26} 27 28 29

Businesses and organisations develop in size, strength and power. Public Limited Liability Companies (PLCs) are usually known for its great hugeness. The disadvantage for employees in such organisation, is the lack of possibility of informal deliberation with the higher management. This means explaining your suspicion of misconduct in an easy way is not applicable to those employees. Those greater companies, or PLCs, often have stricter and more elaborate rules and regulations for multiple reasons, like the situation just mentioned. The committee which makes those regulations (which only apply to PLCs) is called the Dutch Corporate Governance Code Monitoring Committee, assigned by Minister Kamp of Economic Affairs and embedded in the Civil Law. The regulations apply to PLCs which have a

\textsuperscript{25} http://www.parlement.com/id/vhnmt7/jpb00/poldermodel\textsuperscript{26} http://www.mccg.nl/download/?id=1584\textsuperscript{27} http://www.mccg.nl/download/?id=1999\textsuperscript{28} http://commissiecorporategovernance.nl/corporate-governance-code\textsuperscript{29} Dutch Corporate Governance Code 2014 - Corporate Governance Code Monitoring Committee http://commissiecorporategovernance.nl/document/?id=609
balance sheet total of more than 500 million Euros and of which the shares are released on a controlled market. The regulations which the committee makes are not binding: the principle is: apply or explain. Meaning: apply it or explain in your annual report why you did not do so. Article II.1.7 is displayed below:

II. The management board

II.1 Role and procedure

II.1.7 The management board shall ensure that employees have the possibility of reporting alleged irregularities of a general, operational and financial nature within the company to the chairman of the management board or to an official designated by him, without jeopardising their legal position. Alleged irregularities concerning the functioning of management board members shall be reported to the chairman of the supervisory board. The arrangements for whistleblowers shall be posted on the company’s website.

The article states that there is an obligation to publish an official whistleblowers policy which needs to be communicated on the website of the organisation. Besides a rough outline of the procedures, the company remains all freedom to decide the content of the policy. On the one hand, obliging the PLCs to implement a policy, works positively, but on the other hand, a policy remains useless until an effective and righteous content is included. Therefore, this regulation does not provide the waterproof solution.

Whistleblowing policies

As can be read in the previous paragraphs, a whistleblowing policy or any regulation concerning whistleblowers is not obligatory for companies (NVs/PLCs excluded). However a lot of companies do have one, sometimes even using it as PR-article on their website. The problem to this part of the issue is the lack of standardisation: every company has their own policy and every policy deviates from the other. According to research of ECORYS\(^\text{30}\) in 2006, approximately 1 of the 10 companies in the Netherlands has adopted a whistleblowing policy. In order to analyse a whistleblowers policy, we must pick one. Since the overarching healthcare branch BOZ has made a ‘model’ whistleblower policy which can be adopted on many healthcare institutions, we will take it as an example (for the policy link: see foot-note\(^\text{31}\)). The general idea is that the terms are explained, the position of the Board is described, the position of the whistleblower is protected, the confidant’s tasks are assigned and the procedure is elaborately discussed. Lastly, in nearly every policy, the company mentions the importance of discussing it

\(^{30}\)http://www.adviespuntklokkenluiders.nl/docs/bibliotheek/evaluatie-zelfreguleringsklokkenluidersprocedures.pdf?sfvrsn=18

\(^{31}\)http://www.brancheorganisatieszorg.nl/publicaties/klokkenluidersregeling
Chapter 1 - What is the situation right now?

internally instead of publicly. The common flaw in policies is discussed in subquestion 1 and other example will be given in chapter 2 and 4. The general table of contents of whistleblowing policies:

1. Terms and definitions
2. Internal procedure
3. External procedure
4. Legal protection of whistleblower
5. Conclusion

Houthoff Buruma is a privacy company which advises enterprises. As part of their work, they have written a Privacy booklet, Tips and Tricks for enterprises, of which a section is called: The Whistleblower Policy and Privacy. It states the importance of such a policy and the need of implementation of it. Explaining your employees about how to deal with suspicion of misconduct or illegal activities, prevents them from going to the media and ruining the reputation. Furthermore, Houthoff explains the different legislation and the lack of rules for the private sector. Along with the CBP (College Bescherming Persoonsgegevens), it emphasises the discouragement of reporting anonymously, the two organisations prefer confidently reporting it to the confidant or president of Supervisory Board. Moreover, the lack of knowledge upon the existence of such a policy among the employees is low and therefore clear and transparent information for the employees is desired.

A very important note to whistleblowing of Houthoff Buruma is: whistleblowing concerns a suspicion.

Further advice of Houthoff Buruma for organisations in the private sector

The CBP further claims that it is preferable to have an organisation external of the organisation itself, which deals with the suspicions of misconduct. Furthermore a pledge of secrecy for the people who handle the whistleblower cases is needed. Both of those recommendations are barely visible in practise: due to the costs and bureaucracy which goes along with it.

Houthoff Buruma reminds the reader of the Wet Ondernemings Raad (Works Council Act), which states in article 27, item 1 (J) that the Works Council of an organisation in the private sector must approve on the whistleblower policy of the organisation.

Lastly, the publication of Houthoff Buruma notes the common judicial procedure when it comes to ‘arbeidsrecht’ (labour law). Since there is no law which is linked to whistleblowers, cases are usually based on the article 7:611 of the Civil Law, in which it states the employer and the employee should behave proper as in their function. This is basically the only law which

http://wetten.overheid.nl/BWBR0002747/geldigheidsdatum_12-10-2014/informatie
http://wetten.overheid.nl/BWBR0002747/geldigheidsdatum_12-10-2014#HoofdstukIVA
http://www.or-online.nl/naslag/wetten-regelingen/the-works-council-art
whistleblowers cases are judged on. The judge must see if the actions of the whistleblower can justify the actions of the organisation against the employee.

**Example of clause in confidant policy**

Every company or organisation may decide for themselves what the contents of the whistleblowing policy will be. To add to that, when the organisation has a confidant or VPI, there is a separate policy for the functioning of the confidant. This of course includes a part on whistleblowing. As there are no guidelines for whistleblowing policies nor for confidant policies, some companies adopt very interesting and discouraging clauses. Underneath, you can find an excerpt of the confidant policy of the HZ University of applied sciences in Vlissingen.\(^\text{36} \quad \text{37}\)

It states that no whistleblower is allowed to anonymously report any suspicion of misconduct. This is not just a procedure, but also a statement of the school. This regulation does not only discourage whistleblowers, but also subconsciously state their negative view on whistleblowers. More of those examples can be found on the internet and this shows that the content of whistleblowing/confidant policies should be regulated in future solutions.

**Extra internal possibilities**

As mentioned in this subquestion, the Board does not always handle the whistleblower cases; they usually hire someone who takes care of this. In this paragraph, we will zoom in on those briefly mentioned ‘extra internal’ possibilities for whistleblowers.

First of all, the most common form of ‘extra internal possibility’ instead of the Board of Directors or Supervision is the confidant. The confidant is a person appointed by the Board, which all whistleblowers can confidently (so not anonymously) submit a suspicion of misconduct. The confidant will have the possibility to do research on the suspicion and consequently come with a rapport. The confidant will inform the Board of the general activity of the last year on a yearly bases. The confidant will guide the whistleblower and usually needs to sign a pledge of secrecy in order to protect the identity of the whistleblower. When the confidant operates in a larger

\(^{\text{36}}\) http://hz.nl/nl/Pages/Homepage.aspx

company, a investigation committee can be assigned to do the research.\textsuperscript{38} Sometimes companies can even force whistleblower, with the means of the whistleblower policy, to go to a confidant before publically stating it. As explained in the beginning of this chapter, the objective position of the confidant is doubtful and does not seem to be the problem solving key in the issue.

**Subquestion 4: how does the public sector internally deal with the issue?**

There has always been a difference between the public sector (government and all its smaller organs, such as Water Boards) and the private sector (companies and organisations). In this subquestion, we will research the internal government and thus how the public sector deals with the issue for their (semi)public servants.

Governmental institutions fall under a certain category, to which most an authority or supervision organ is linked. Most of those categories thus are controlled and for those categories, a whistleblowing policy is linked.\textsuperscript{39} Those categories are based on the purpose of the organisation, an example of such a category is: Police and State\textsuperscript{40}. Furthermore, some parts of the public sector have a model whistleblowers policy, such as the Water Boards\textsuperscript{41}. There is even another possibility of how procedures can be decided: for all employees of the provinces there is a solid whistleblowing policy\textsuperscript{42}. However if the public servant wishes to report it somewhere else, there is a Commission for Integrity Provinces. Therefore whistleblowing is controlled by a commission ánd put down in a policy.

Besides the departmental commissions or authorities, there is a council for the entire government: the Onderzoeksraad Integriteit Overheid (OIO). Which’s task and purpose is elaborately explained in subquestion 2. To summarise, its task is to investigate a report of suspicion of misconduct of a whistleblower who could not solve the problem internally. \textsuperscript{43}

\textsuperscript{38} http://hz.nl/Documents/Regelingen/Branchecode%20governance/Branchecode%20governance%20-
%20reglement%20verstrouwenspersoon%20-%20klokkenluiders.pdf
\textsuperscript{39} http://www.advisepunktklokkenluiders.nl/klokkenluider/klokkenluidersregelingen
\textsuperscript{40} http://www.arbeidenoverheid.nl/media/109198/stb-2009-572_klokkenluidersregeling-Rijk-en-
Politie.pdf
\textsuperscript{41} http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Wet%20en%20Regelgeving/Model%20klokken-
luidersregeling%20sector%20waterschappen.pdf
\textsuperscript{42} http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Wet%20en%20Regelgeving/Procedureregeling-
%20melding%20misstand%20provincies%20%28klokkenlui
derregeling%20.pdf
\textsuperscript{43} http://www.onderzoeksraadintegriteitoverheid.nl/home/
On top of that, there is an independent organisation called the Bureau Integriteitsbevordering Openbare Sector (BIOS). This Bureau has the function and aim to make the government corruption free and to promote integrity in the public sector. It also has an educational purpose, as it provides trainings and conferences on integrity. Integrity is a broad term with an even broader definition. Corruption free, fraudless behaviour and the right mentality in the right position is what the term comes down to. This organisation acts sort of as a passive whistleblower, since it signals problems and looks at misconduct and corruption. The passive element is the backstage analyses of all the procedures and the culture in departments of the public sector.

All in all we can conclude that the public sector has plenty procedures and regulations to prevent and promote whistleblowers and to enhance integrity. The different policies make sure every public servant can apply to at least one policy and is always able to move up one or two steps if they want to (step 1: departmental commission or authority; step 2: OIO or BIOS). This clearly marks the difference between the public sector and the private sector (private: sometimes a policy, no general regulation, only for NVs; public: for every civil servant a whistleblowers policy and an external organ), which must be taken into account when thinking about the future of this issue.

Subquestion 5: what is the situation in the European Union?

Just like the Netherlands, any other country faces the issue of whistleblowing: how can we make an effective, integrity promoting and job protecting regulation to which companies can also agree? This is the current situation of the EU in a nutshell and even applies to beyond those borders. The different types of answers, actions and political decisions which result from this question, can all be found in the EU: the EU functions as a perfect model of all interests and concerns in society. Countries wanting or having no regulation at all, states having partial regulation and nations are having full and comprehensive provisions. In order to get a visual along with those movements:

- **No regulation or provisions**: Bulgaria, Greece, Finland, Lithuania, Portugal, Spain
- **Partial regulation**: The Netherlands, France, Germany, Poland
- **Comprehensive provisions**: The United Kingdom, Luxembourg, Romania, Slovenia

This research was done by the Non-governmental Organisation Transparency International, which released a report about the EU and this issue. From this list with countries above, we can conclude that it is not based on economic welfare, geological position or political system. This is surprising, as you would expect the wealthiest countries having the best labour law and regulations. Some experts, side by side with Transparency International, claim that the law

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44 http://www.integriteitoverheid.nl/over-bios.html
45 http://www.integriteitoverheid.nl/over-bios/wat-is-integriteit.html
46 http://euobserver.com/social/121989
47 http://www.transparency.org/
adopted by the United Kingdom in 1998 (the whistleblower law - the public interest disclosure act) is the ultimate goal for the other EU country. As it provides the comprehensible and adequate provision. The other countries, including the Netherlands, are reluctant to put it down in such official words and those countries carry on with their provisional solution and small paragraphs in their laws.

The Public Interest Disclosure Act, which was briefly mentioned earlier on, describes a very interesting and innovative twist to the relationship between employers and employees. According to the EU-Observer\textsuperscript{48}, the law states that the employer must prove that any retaliation or action against an employee was not a consequence of the employee being a whistleblower. This is a reverse scenario to the Dutch model. Since the Dutch model describes that the employer must prove that an action or retaliation of the employee, was a consequence of the employee being a whistleblower. The UK model puts the employee in an easier situation and further emphasises the importance of whistleblowers. This law is not just a document, but also a statement about the stance of the UK’s government. The result of this act was a tenfold increase from 1999 to 2009 of cases submitted to the employment tribunal. A common negative response to this law is shared by David Louis (writer in the Industrial Law Journal): it does not force employers to adopt policies in their organisation, therefore the effectiveness stays limited. \textsuperscript{49} If we want to look at the possible implementation of this Law in the Netherlands, we have to look at the other negative responses as well. Here is the list of the most mentioned weaknesses:

- Not all people are included: e.g. self-employed and volunteers
- It does not prevent employers “blacklisting” employees who are whistleblowing
- It does not enforce the implementation of a whistleblower policy for organisations (see previous paragraph)
- It does not compensate the employees for mental or psychological damage
- The Act is not familiar to the entire public: according to a research of Public Concerns At Work, only 28% in 2010\textsuperscript{50}

When we mentioned the recognition of this law as benchmark for the other EU countries, we did not state the international success: ‘western’ countries such as Ireland and Australia (western in the range of culture and economy) and eastern countries such as Japan and South-Korea have used this law as model for their own country (eastern is in this case geologically used).

The way the society and politics deal with this problem can be labelled as ‘event-based-action’. After major event, for example the church scandals in Ireland, the politicians are woken up and all of a sudden law emerge. This was also the case in the UK. This event-based attitude causes legislation to come too late.

\textsuperscript{48} \url{http://euobserver.com}  
\textsuperscript{49} \url{http://en.wikipedia.org/wiki/Public_Interest_Disclosure_Act_1998#cite_note-21}  
\textsuperscript{50} \url{http://eprints.mdx.ac.uk/6937/}
There is also a worldwide social development going on: the way the media deals with whistleblowers. Here is an excerpt of a news article:

The articles concerning whistleblowing have a positive and pleasant atmosphere. The negative connotation to whistleblowing is nearly gone in the international society and the media is not depicting whistleblowers as traitors or threats to organisations anymore.

However the German word for whistleblower does still contain a negative connotation, due to the word itself: Nestbeschmutzer (those who make their own nest dirty) and Denunzianten (denouncers). Transparency International started looking for a better translation for a ‘whistleblower’ in 2000. They thought of the word ‘Hinweisgeber’ (someone who gives a tip). Unfortunately, due to the ‘awkwardness’ of the word, it is not used as much. The Dutch word whistleblowing is ridiculed, since it can also be applied for someone tolling the bell in churches. So the Dutch word has a sort of humorous connotation.

The European Union itself is dealing with the issue as well. Some members of the European Parliament have been trying to come up with regulation proposals for the European Union. There have been several rumours about corruption and financial fraud within the EU: a solid whistleblower act could be the solution. However, Cecilia Malmström, European Commissioner for Home Affairs, told the media that the European Commission is not willing to accept or implement such regulation; she believes every country has their own regulations. Some parliamentarians at the Human Right Watch Dog Council of Europe have the thoughts of introducing this issue into the Declaration of Human Rights in the European Union, in order to have a regulation to guarantee protection and which goes beyond national borders. The EU sees whistleblowing as a way to solve corruption within the EU, since the Italian European parliamentarian Salvatore Iacolino presented a research stating 4-5% of the EU GDP is lost to corruption.

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53 http://whistleblower-net.de/pdf/TI_EU27_Germany_WBNW.pdf
55 http://ejbron.wordpress.com/2013/11/01/eu-wijst-wet-ter-bescherming-van-klokkenluiders-af/
56 http://euobserver.com/justice/121873
Edward Snowden, who is the number one whistleblower at the moment (2014), submitted a testimony to the European Parliament’s Civil Liberties Committee, stating a need for better whistleblower policies in the European Union and better channels for whistleblowers to inform. He restated the importance of such policy by saying whistleblowing should not mean individual sacrifice, followed by persecution and exile.

**Subquestion 6: what are the other/overarching possibilities for potential whistleblowers?**

In this modern world, organisations do not function completely solely: there are always overarching organisations to assist them, control them or protect them. Especially for smaller companies with few employees and (nearly) no human resources department, other organisations will assist them and present them possibilities for all administrative and lateral production aspects. Whistleblowing is an excellent example of a procedure, of which the priority for the entrepreneur is extremely low. In this subquestion, we will look at the other/overarching possibilities for both companies and whistleblowers.

**Speak Up**

The most famous Dutch overarching solution is SpeakUp by People Intouch. SpeakUp is a service of People Intouch which they sell to companies varying from 12 employees to multinationals with an extensive database of employees. This is the first difference when we compare this to the helping organisations mentioned in the previous paragraphs: it costs money for the company or organisation.

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58 [https://usahitman.com/sueppw/](https://usahitman.com/sueppw/)

Chapter 1 - What is the situation right now?

The basic idea of SpeakUp is that the company will have less of a task dealing with the issue and that filtering, analyses and contact is done by SpeakUp. It will provide a platform for employees to submit a report or complaint, by form or telephone. SpeakUp will guide the whistleblower and handle the submitted report. SpeakUp will then inform 'senior managers'. Those can reply to the whistleblower via SpeakUp, so there is no direct contact or reveal of identity. After the first stage, the employee and the company can both leave messages for each other, after it has been translated by SpeakUp. SpeakUp will translate if needed and this service goes beyond borders to make this service operable for multinationals. Basically it functions like this:

![How does SpeakUp work?](image)

The idea is the objectivity and independence of SpeakUp to solve whistleblower cases in organisations. To add to that, SpeakUp claims that this is a more accessible and friendly solution compared to the standard whistleblower policies. Though, it wishes to state that SpeakUp is a last resort option for whistleblowers, not a common hotline.

Without stating reasons why, companies such as: KPN, AkzoNobel, BMW, Skanska, Randstad and VION Food Group, have chosen for this solution. This does show a wide range of interest for this overarching solution.

The anonymity is secured in this way, which is one of the biggest demands of whistleblowers. The system provides a chain which will make any message identity-less. This does cause a common counter argument, which says that this will evoke false reports. However SpeakUp does a verification check about the company for the anonymous whistleblower, which diminishes this problem. Furthermore, SpeakUp sees that anonymous whistleblowers reveal their identity after the second or third round of interaction with SpeakUp or the company.\(^\text{61}\)

There are no details on how SpeakUp deals with the massive amount of identity and privacy data it gathers throughout the world of whistleblowers. Since it is a company, we cannot fully trust its objectivity and independence. When philosophising about it, it sounds easily possible to pay SpeakUp a little bit more to declare more cases as invalid or to pass over information about

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whistleblowers, so they know who not to hire. This philosophising is all we can do to analyse this system. Here is a list of factors which makes it a fraud-sensitive solution:

- it is a profit based company with owners/employees having private interests
- it is paid by the organisations the complaints and reports are submitted on
- it has an immense database of personal data on a group of employees in a fragile state
- it is in the position to turn a report down, if they believe the report is false, invalid or submitted by a fake person

Surprisingly, SpeakUp is the only real Dutch company selling this service. Some American look-a-likes are “Global Compliance” and the “Ethics Line”, when you compare those to SpeakUp, the American service are more heading towards a complaint-hotline, whereas SpeakUp is a line to report a misconduct. The German and more European model looks more like an Ombudsman solution. The hotline will not only register your suspicion of misconduct, but also investigate the problem. The VPI-model (confidant/Vertrouwens Persoon Integriteit) is most commonly used in the Netherlands. Another overarching possibility for companies is Hoffman Bedrijfsrecherche\(^{62}\), which provides a comparable service. Employees can call to Hoffman Bedrijfsrecherche, which will then look at the case and inform the company.

To conclude SpeakUp, it is an easily accessible solution, with a wide range of positive answers to problems, however does raise uncertainty when it comes to objectivity.

Hotlines

Besides the external organisations whistleblowers can go to (subquestion 2), the internal possibilities (subquestion 3) and the overarching companies such as SpeakUp (subquestion 6), there are more options. Several national (telephone-) hotlines are introduced to make reporting more accessible. The hotlines can be governmental initiatives or companies.

The most famous hotline is Meld Misdaad Anoniem - Report Crime Anonymously\(^{63}\). This hotline is not focussed on whistleblowers at all, but is available for them. Usually, MMA will redirect whistleblowers to the right organisation, however when the suspicion of misconduct lies in the field of serious crime, the MMA can come in as handy for the whistleblowers.

A true profit-based hotline is JuroFoon.\(^{64}\) It is a contraction of Legal Telephone Hotline. JuroFoon is 12 hours per day available to give you legal advice on a matter. Seeing the fact whistleblowing also emerge legal issues, JuroFoon can advise on the best way to handle whistleblowing in legal sense.

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\(^{62}\) https://www.hoffmannbv.nl/sites/default/files/documenten/Hoffmann-pakketten_0.pdf

\(^{63}\) http://www.meldmisdaad.nl/

\(^{64}\) https://www.jurofoon.nl/
Mira Recherche & Adviesbureau is a detective force for businesses. A service they sell is Verkliklijn.nl. Using this hotline, you can submit your suspicion of misconduct about your work. Verkliklijn.nl is not the only private detective solution in the Netherlands: most private detectives offer a possibility to solve your suspicion of misconduct along with them.

Labour- and sector organisations
To add to the overarching possibilities or regulations for whistleblowers, we will have to look at the labour organisations/unions, such as FNV, CNV, Abvokabo, AOb. Since FNV is a broad union, available for nearly all workers in the Netherlands, we will focus on that organisation.

As mentioned, FNV is a labour union defending the public interest of workers in the Netherlands. Since whistleblowing is a classic example of a social- and labour issue, FNV has a link to it. For whistleblowers, FNV can be used to find public releases about whistleblowing, to read testimonials or to ask for support, however it is merely of theoretical use: real advice comes from Adviespunt Klokkenluiders and those type of institutions. FNV did write some interesting letters in 2005 and 2008 to the prime-minister of that time. In those letters, FNV (along with other labour unions) states the contrast between this issue in the public- and private sector. Furthermore it calls for an independent organisation for the private sector and hopes for recognition in the court of law for whistleblowers, since a judge was an antagoniser for a whistleblower in Dutch court. Those letters to the prime-minister is more of a public statement than a true recommendation for the prime-minister, since there are no real inventive solutions stated. This public statement is a shout out for action and due to the fact that FNV has over one million members, the shout out is quite powerful. Besides the shout outs, public statements, letters and detailed explanations of whistleblowers cases, FNV also offers a document about the freedom of speech for employees of a company. It is a very extensive document, including tips, examples, rules and principles.

To take a side path, we see a difference in how the FNV (but also the government) writes about whistleblowers. It states that whistleblowing does not only mean stating your suspicion of misconduct, but also trying to protect the public interest. Whistleblowing should always contain a public element, such as a public threat, danger, corruption, etcetera, which imposes a possible danger to social interest. It tries to bring whistleblowing to a different level, with different intentions and different goals.

65 http://www.fnv.nl/
66 http://www.fnv.nl/themas/opdewerkplek/klokkenluiders-externe-links/
69 http://home.fnv.nl/bijlagen/2904/klokkenluiders.htm#k651

WHISTLEBLOWERpws@gmail.com
This also changes our improved definition from: *whistleblowing is stating a suspicion of misconduct*, to: *whistleblowing is stating a suspicion of misconduct which might impose a danger to the public/social interest (het algemeen belang)*. This change is a way to state how the perfect whistleblowing act looks, however there is no reason to say a normal whistleblowing act is not valid. Whistleblowing which would only improve the organisation or the position of the employees is as valid as whistleblowing about the public interest.

To conclude the FNV plays a certain role in this gigantic issue. It provides a platform with all important publications about whistleblowing. Besides that, it has done research and put it in a publication along with tips, cases and current regulations. Moreover it does shout outs to the government to express the opinion of their members. It does not really take up the position to give advice or guide whistleblowers, since there are enough institutions to take care of that. All in all, the FNV is useful for whistleblowers, but also contributes to the never ending spider web of organisations, regulations, institutions and policies for whistleblowers.

**Subquestion 7: what is the ultimate last resort?**

As mentioned in the introduction of this chapter, whistleblowers have one last resort for if they managed to fight their way through all the previously mentioned regulations. A last resort about which companies or organisations can be quite upset and take harsh sanctions as a result. This last resort gives a platform for whistleblowers, but can ruin the reputation of a company at the same time.

The last resort is PubLeaks. PubLeaks is an independent foundation which gives whistleblower a platform to submit documents, reports, suspicions, analyses, or anything with which they can prove that something is done illegal or is a misconduct. This information they upload, can be send to most of the national presses, such as NOS, NRC Handelsblad, NU.nl and het Financieel Dagblad, but also local and online press organisations. The whistleblower can choose to which press institutions to send the information. PubLeaks is free and anonymous for whistleblowers and with no restrictions or what so ever. The advantage for whistleblowers is the accessibility: whistleblowers do not need excellent connections with the press or to persuade anyone. The can submit it to all press institutions and at least one will most certainly do some research on it.

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70 https://www.publeaks.nl/
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On this page, you can find a screenshot of the website of PubLeaks. It shows a selection of the cooperating national press.

The anonymity is secure to a limit. the HTTPS connection protects the content of the uploads, however does not protect the identity of the user. Therefore it is highly discouraged to make use of PubLeaks at work or while using an Intranet connection, since the employer has the possibility to see that the whistleblower has uploaded documents. As mentioned, the documents are protected using HTTPS. Moreover, it is uploaded via three random servers. PubLeaks advises on their website to download additional software to delete all your traces and to protect your identity. For example Tor Browser Bundle (to browse anonymously), BleachBit (to delete your traces) and MAT (to delete your metadata (data on data), which is information like time, place, etc). These counters regulations will guarantee the complete protection of identity and documents, however the whistleblower must look at his/her case to see if it is all necessary. For example, whistleblowing as an officer in the US army will need those counter regulations more than a cashier. Since the US government will try to trace the whistleblower to the bone. Experts have other doubts: they wonder if the court can force PubLeaks in a court case to disclose identity.

To take a look from a different perspective, businesses have some serious struggles with PubLeaks. Via PubLeaks, not just their reputation is at stake, but also confidential businesses secrets might be revealed. According to Arnaud Engelfriet, a lawyer on internet affairs, explains that the law is not clear if leaking via PubLeaks is even allowed (or whistleblowing in general). Leaking or disclosing business (or governmental) secrets (=whistleblowing) is forbidden by law. However there is one constitutional right which can swipe the previously

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71 https://www.publeaks.nl/faq.html
72 https://www.publeaks.nl/over-veiligheid.html
73 https://www.torproject.org/projects/torbrowser.html.en
74 http://bleachbit.sourceforge.net/
75 https://mat.boum.org/
76 http://www.mediawijzer.net/publeaks/
Chapter 1 - What is the situation right now?

mentioned law of the table: freedom of speech\textsuperscript{77}. Yet, the Supreme Council\textsuperscript{78} has decided that you are only allowed to disclose business information if you have been going through all internal processes and the publication is of great public interest. This explanation of Arnaud Engelfried gives a twist to how whistleblowing is seen judicially.

According to the Expertgroep Klokkenluiders, PubLeaks does not serve as a helping factor: it increases 'sensation' stories in the news and does not offer companies to adequately respond to it. In the meeting with them, the Expertgroep also stated that the difference between leaking information and whistleblowing is very difficult to state.

To conclude, PubLeaks is a great opportunity for whistleblowers, but also puts forward a privacy risk for whistleblowers and possible suing by the company. For companies and organisations, this last resort is not as pleasant either, as their employees can simply upload precious confidential information and damage their image. Trust in the press and trust in the employees takes up a central role in this last resort. Despite the risks and negative side effects for both parties, it is an excellent way to disclose situations in which the public interest is at stake and this last resort must stay the last resort in order to protect the greater good.

\textsuperscript{77} \url{http://blog.iusmentis.com/2013/09/10/klokkenluidersplatform-publeaks-gelanceerd-hoe-legaal-is-dat/}

\textsuperscript{78} \url{http://jure.nl/ecli:nl:hr:2012:bw9244}
Conclusion

In order to conclude the theoretical research on this topic, concerning the past and the present, and to impose order and structure, a few paragraphs will be devoted to sum up the previous seven subquestions. Overall, we notice a wide range of options and potential solutions for whistleblowers, however the amount is what makes it difficult for whistleblowers. The process whistleblowers go through can be outlined in a general overview as you can see below.

General overview of steps for whistleblowers

Subquestion 1

Internal possibilities

Subquestions 3 & 4

The normal procedure starts with direct contact with the direct manager of the whistleblower. This direct contact solves most of the problems and those whistleblowers are usually not registered and therefore no figures are available. If the direct manager is involved, there might be a whistleblower policy to use and this policy usually refers to the VPI or confidant. Just like the cases in which the direct manager helps, a lot of cases are solved with the help of the VPI. The last possibility of solving the issue internally is the Board of Directors or the Supervisory Board. When all of those options do not work out, whistleblowers will start looking beyond the company itself.
Chapter 1 - What is the situation right now?

Other/Overarching possibilities

Subquestions 5 & 6
After making use of all internal possibilities, overarching or other possibilities might be useful for whistleblowers. Documentation and examples of whistleblowers can be retrieved from overarching organisations, such as the labour organisation FNV. Along with that, news and reports of the EU and other organisations are helpful. Some companies even hire other companies, such as SpeakUp, to take care of all whistleblowers cases. This is also an overarching possibility. Lastly, hotlines and private detectives belong to other possibilities.

External possibilities

Subquestions 2 & 7
After whistleblowers have or have not used possibilities in the grey area of Other / Overarching possibilities, an overload of possibilities open up for whistleblowers. This overload is one of the reasons why a new solution for this problem will be searched in this paper.
Chapter 2

What are examples of whistleblowing?
Introduction

VION Food Group
Subquestion 1.1: VION Food Group: what happened?
Subquestion 1.2: What is Cressey’s Fraud Triangle on VION’s fraud?
Subquestion 1.3: What is the position of whistleblowers in this case?

NVWA
Subquestion 2.1: What happened in the NVWA scandal?
Subquestion 2.2: What is the position of whistleblowers in this case?
Subquestion 2.3: What were the results after whistleblowing?

Meat Processing Company
Subquestion 3.1: Why did we visit to a Dutch meat processing company?
Subquestion 3.2: How was the visit to a Dutch meat processing company?

Conclusion
Chapter 2 - What can we learn from examples of whistleblowing?

Case about meat processing industry, lesson learned and culture in organisations

Introduction

In the previous chapter, we looked at all the difficulties whistleblowers face. However, how do whistleblowers actually make the news and what are scandals in which the importance of whistleblowers is seen. Problems which are further looked into in this chapter are: the relationship between employee and employer, the inadequate whistleblowers policy, retaliation and labour protection. The overflow of organisations (see chapter 1) is not discussed in this paragraph, since the whistleblowers did not openly discuss their use of those organisations.

In this chapter we will discuss one of the biggest frauds in the meat industry the Netherlands has ever known. It took place in a company called VION Food Group. On its website referred as: ‘an international food company that processes high-quality foodstuffs. The product portfolio of VION Food comprises fresh pork and fresh beef, and derived products for the retail, foodservice and processed meat industries. VION Food Group supplies client-specific products and innovative concepts to retail, industrial and food service clients in its home markets in the Netherlands and Germany, as well as markets in Europe and the rest of the world. VION Food seeks to satisfy or exceed consumer needs, and in doing so, to add value to the entire supply chain.’ VION is one of the biggest companies in the European meat industry. The company owns 8 factories in the Netherlands and 34 in Germany. VION employs 6,700 people of whom 1,670 employees are Dutch. In addition between 4,000 and 5,000 farmers are depending on the VION Food Group. (July 14th 2014)

But unfortunately this is not the exact truth about VION, because a lot of fraud took place in this company with both ethical and health consequences. In this chapter we will explain what happened, how the public was informed and what happened to the whistleblowers. But not only companies make mistakes as to food safety. Indeed, the Dutch government is doing the same: this will be explained in paragraph 3. To confirm these rumours and news items, we went to a meat processing company where we spoke to employees, managers and veterinarians. Finally we will answer the main question in this chapter, namely: which lessons have we learned from these scandals and which culture is prevailing in the company?

80 http://www.omroepbrabant.nl/?news/213902612/Vleesverwerker+VION+in+Boxtel+sluit+vestigingen,+geen+banen+verloren+in+Nederland.aspx

WHISTLEBLOWERPS@GMAIL.COM
VION Food Group

Subquestion 1.1: VION Food Group: what happened?

VION Food Group\(^1\)\(^2\)\(^3\)\(^4\) has been in financial problems since 2012, therefore it sold one of its best businesses called VION Ingredients. The business was sold for 1.6 billion euros but despite that the company still made a loss of 136 billion euros. Most of the revenues were used to pay overdue payments.\(^5\) Due to the big losses and debts the company had to come up with an idea to cut costs or make profit in another way.

And the company found a way, instead of saying no to a customer when a product is out of stock; they used another product, and gave that product to the customer. A whistleblower confirmed that this was happening with VION's Good Farming Star Pork.\(^6\) If a customer asked for Farming Star Pork, VION would give normal pork if the high quality pork was out of stock. The reason why this was done is that VION had a big debt and every order raises the sales volume which was necessary to pay off the debts. According to E. de Lange (member of the European Parliament) this is Logo Fraud, which is illegal. In addition, in this case normal pork is sold as farming star pork to make a financial profit which is a characteristic of food fraud. The whistleblower tells this to Zembla, but another whistleblower confirmed the same form of fraud to "Omroep Brabant" (local news agency). A batch of 24,000 kilograms of pork had been labelled as biological ham. 11,000 kg of this batch was sold to supermarkets. According to two whistleblowers the employees did not want to take part in the fraud case, but the management forced them to, they even threatened the employees with retaliation.\(^7\) The biological ham was stored in a cold store in Den Bosch, two VION employees were forced to put other labels on the crates in which the meat was stored. The crates contained regular meat instead of biological meat. But not only the crates were labelled as biological, up to this point this is not fraud from a legal point of view, because it could have been human failure. Although in VION's digital stock tables the meat stored in Den Bosch was also changed in biological meat, from here it is legit to say that this is a fraud case. From this moment, the employees had the right to accuse VION because of the commitment of fraud. The employee has to go the police and has to report the fact that VION is committing fraud, the public prosecution service would investigate the matter and

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\(^1\) http://www.omroepbrabant.nl/VION
\(^3\) http://www.vionfoodgroup.com/en/about-vion/code-of-conduct/
\(^4\) http://www.vionfoodgroup.com/en/about-vion/quality-policy/?L=0weylander%3FcHash%3D68caa6824836007b50458461f716bede
\(^5\) http://www.omroepbrabant.nl/?news/213902612/Vleesverwerker+VION+in+Boxtel+sluit+vestigingen,+geen+banen+verloren+in+Nederland.aspx
\(^6\) Zembla: sjoemelen met vlees 5 september 2013
\(^7\) http://www.omroepbrabant.nl/?news/203455822/Klokkenluider+vleesfraude+VION+spreekt+We+hebben+dit+onder+bedreiging+moeten+doen.aspx
VION has to go to court. But because VION's employees are not skilled, do not have any idea of the moral consequences and the fact that they are threatened by the management prevented that VION had to go to court.

But this is not the only case in which VION tries to create more value to their products. Every pig which is disapproved by the veterinarian costs the company a certain amount of money. So therefore spoilage had to be reduced. But what often happens in VION's slaughterhouses is that veterinarians approved pigs which were actually not suitable for human consumption. The approved pigs came into the food chain because the speed of the slaughter line: the speed was so high that the veterinarians did not even have the time to look at a pig carefully, and as soon as an veterinarian stopped the slaughter line, he was sworn at by a manager. A governmental report showed the same results:

Wij stellen vast dat dierenartsen in de praktijk van het veterinaire toezicht onder een voortdurende tijdgedrukt werken waardoor spanning kan ontstaan tussen een strikte toepassing van wettelijke voorschriften (hun eigenlijke taak) en belangen van het bedrijfsleven. Als gevolg van het feit dat de werkzaamheden zijn getarifeerd heeft de klant belang bij een efficiënte en effectieve tijdbesteding

But this has consequences for the food safety. For example the stomach and the intestines should be removed from the carcass carefully, to prevent the leaking of muck onto the carcass. If this leaking would occur, this part of the animal should be removed from the carcass and must be destructed. However, according to another whistleblower, this does not happen: around 40% of the carcasses is spoiled with muck and is still approved. Their solution was that the carcasses are washed with water. This causes another problem, since it spreads out the muck in which the e coli bacteria is situated. Washing the carcass will let the muck disappear for the visible eye, so the veterinarian will not see it. They do not even have time to look at it because one department of VION slaughters 650 pigs an hour. In this case, food safety is threatened because the e coli bacteria will get into the food chain on a large scale.

What we see in this case is that fraud will be more likely to take place if the company has serious economic difficulties. This does not only give moral problems, because customers think they consume biological meat, but it also results in bad health situations because of the e coli bacteria inside the meat. In the event of the threatening of food safety on such a big scale we can actually speak of social misconduct. In this event the whistleblower can go to an organisation such as the Expertgroep Klokkenluiders to get advice on how to deal with misconduct in a way which does not threaten the employee.

88 Zembla: sjoemelen met vlees 5 september 2013
89 Investigation report VWA: modernisering activiteiten levende dieren en levende producten 2007
Subquestion 1.2: What is Cressey’s Fraud Triangle on VION’s fraud?

The behaviour of the VION staff can easily be explained by Cressey’s Fraud Triangle which shows how fraud can be provoked. “While researching his doctoral thesis in the 1950s, famed criminologist Donald R. Cressey came up with this hypothesis to explain why people commit fraud.”  

Cressey is credited with the theory of the “fraud triangle,” three elements that must be present for occupational fraud. These three elements are:

1. Pressure - pressure is the main reason for one to commit fraud. Money or financial debts are likely to create this pressure because of a financial need or financial problem. That is the main reason in this case too, because of VION’s financial debts the management had to commit fraud.

2. Opportunity - opportunity is the ability to commit fraud, fraudsters want their problems to be solved secretly and therefore it should not be detected by anyone. Opportunity is caused by both bad internal and external supervision. Failure to establish adequate procedures to detect fraudulent activity makes fraud more likely to happen. Therefore both the company and the government should not give employees the opportunity to commit fraud. This mistake was made by the Dutch government in this case. Due the lack of audits, VION had the opportunity to commit fraud and that is what happened in this situation too.

3. Rationalisation - rationalisation is the most important part of committing fraud because the fraud has to be justified in every case. In this case the rationalisations for committing fraud are: The person, because of job dissatisfaction (salaries, job environment, treatment by managers, etc.), believes that something is owed to him/her. Employees were forced by the management to process ‘dirty’ meat; veterinarians were threatened by the managers as soon as they stopped the production to inspect a certain carcass etcetera. Employees were forced to go back to work as soon as they complained about having to commit fraud and were threatened with dismissal. The person is unable to understand or does not care about the consequence of their actions or of accepted notions of decency and trust. A lot of employees working at VION originate from Eastern Europe and were not even educated for this job; they did not know that the e coli

90 http://www.lacpa.org.lb/includes/images/docs/tc/tc363.pdf
91 Donald R. Cressey, Other People’s Money (Montclair: Patterson Smith, 1973)
bacteria could be on the meat and they do not speak Dutch so they cannot even complain as well.\textsuperscript{92}

To prevent fraudulent activity one of the three legs of the triangle should be taken away. The organisation has the most influence on the opportunity to commit fraud. Therefore the organisation should make a clear system with much control by a higher management line to prevent fraudulent activity and effectively detect fraudulent activity.

Subquestion 1.3: What is the position of whistleblowers in this case?

This are two major fraud cases, the fraud case and the 'dirty' meat case but if the employees knew what was happening, why would they not do anything about it? Simply because they cannot speak up: their line managers do not take their employees seriously. First of all, 70\% of the employees originate from Eastern Europe and are not qualified to do their job. Secondly, they have to make as much profit as possible. As soon as an employee starts complaining about mischief the line manger starts swearing or tells them to get back to work and mind his own business.\textsuperscript{93}

We took a look at VION’s code of conduct in which the whistleblower policy is included. What we found, was frightening. This is what we found before opening the code of conduct:

\begin{quote}
Whistleblower

Our whistleblower policy was derived from our Code of Conduct, and has been operational at Group level since 2011. The whistleblower policy allows all employees to report malpractices (of any kind) without fear of retribution. Reports are treated absolutely confidentially and anonymously. Our Code of Conduct applies to all employees of all companies and subsidiaries.
\end{quote}

This seemed good until we opened the code of conduct. The company attaches more value to its own reputation than to its employees' privacy. This can be derived from the following quote:

\begin{quote}
http://www.schools.utah.gov/finance/Professional-Development/UFOMA/2a--UFOMA---Fraud-Triangle.aspx
\end{quote}

\begin{quote}
Zembla: sjoemelen met vlees 5 september 2013
\end{quote}

\begin{quote}
\end{quote}
Moreover, the following excerpt shows that the interests of the company are actually always valued higher than the employee:

Summarized: the management has the right to take action as soon as they think the employee could be a possible threat for the company. And this is exactly what is happening, as seen in the reportage from Zembla: employees are threatened by line managers. In an interview a whistleblower tells Zembla: ‘if you had a complaint, you would be told to get back to work and mind your own business, sometimes the management swore at us’. This indicates that employees do not have much to say and the possibility to fraud continues to grow.

Not having the opportunity to report misconduct within the organisation is a reason for whistleblowing. VION’s employees have another way to report misconduct. VION is assigned to a programme called ‘Speak Up’ which is an external contact line to report misconduct. But this was not taken seriously by the management, because the concerns were reported anonymously. Speak Up is not a solution for whistleblowing, it is just a way of presenting it in a different way and a form of Window Dressing. The cause of whistleblowing is that the employee is ignored by the company, if the company has a more positive attitude towards reporters of misconduct, the employees will not have to report their concerns anonymously nor they have to go to the media. Instead of taking action against the cause of anonymous reports, the management now takes action to make anonymous reports easier. Unfortunately, the cause of anonymous reports stays the same: employees are afraid to report because of possible consequences. This indicates that the whole approach of the company is wrong, instead of taking responsibility for their misconduct the company is denying and trying to distinguish the misconduct.

**Subquestion 1.4: What were the results of whistleblowing?**

The way VION operated due its financial problems is unethical and causes a social misconduct; therefore measures were taken by the government.

First of all, in the fraud case in which 11.000 kg of regular pork was sold as biological pork VION
received a 15,000 euro fine for the fraud case reported by a whistleblower. This is not the highest fine that can be claimed in a fraud case like this (highest fine would be 19,500 euros). Even though the judge paid attention to the large amount of meat which was involved and damaged consumer confidence the maximum fine was not claimed, because of the fact that the fraud was caused by only one manager.

Second of all the government will take more responsibility, the amount of unannounced audits will grow, therefore probability that fraud will become more apparent. The government will work together with numbers of authorities like Interpol, Europol, FIOD, the public prosecution service and customs. These are measures taken in case fraud occurs another time, but the government made some changes to prevent fraud as well.

The responsibility for the quality of the audits will no longer be in the hands of the companies themselves; the NVWA (Consumer Products Safety Authority) will take this responsibility. This will ensure the public health and food safety according to the cabinet.

To prevent that this whole case about VION will start over, the government made a code of conduct for the meat industry which will regulate and stimulate Corporate Social Responsibility (CSR) and will force the management to take adequate measurements to ensure the quality, safety and integrity.

All these changes in the system are caused by whistleblowers, not only within VION Food Group but also other companies; therefore we can conclude that whistleblowing is useful.

**NVWA**

**Subquestion 2.1: What happened in the NVWA scandal?**

In the Netherlands the ministry of economic affairs is also accountable for human and animal health. There is an independent agency for this task which is called the Netherlands Food and Consumer Products Safety Authority or NVWA. It monitors food and consumer products to safeguard public health and animal health and welfare. The Authority controls the whole production chain, from raw materials and processing to user products and consumption.

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97 [http://www.omroepbrabant.nl/?news/212421422/NVWA+richt+vizier+op+vleesfraude+meer+controles.aspx](http://www.omroepbrabant.nl/?news/212421422/NVWA+richt+vizier+op+vleesfraude+meer+controles.aspx)

NVWA focusses on three main tasks: supervision, risk communication and risk assessment. But the ministry has other interests than the NVWA has: the ministry of economic affairs also had other advantages, namely the economic advantages of the agricultural sector. Unfortunately, food safety and economic advantages will not go hand in hand. Therefore some changes have been made in 2005. Until 2005, the NVWA took the responsibility of the quality inspection for meat. But in a series of budget cuts, the quality inspection was outsourced to a private company called KDS (Quality control livestock sector). Outsourcing this task should also prevent putting the wrong advantage above the other and food safety should be guaranteed. The KDS is an official assistant of the NVWA and takes care of the provision of post mortem verification operations in all Dutch red meat slaughterhouses. The KDS is an official assistant, which results that as soon as the KDS employee finds any form of an irregularity the slaughtered animal must be analysed under supervision of an NVWA veterinarian.

Until 2005, the inspectors were appointed by the NVWA and they were highly educated. This changed when the KDS became in charge: the inspectors became jobless. KDS is a private company which is part of Comore, the company strives for profit. Therefore the company has to have low labour costs, meaning less highly educated inspectors. So the company hired employees from Eastern Europe, who were not as well educated as the inspectors from the NVWA. This leads to a lower quality of inspections, and a higher risk of diseases in the meat. A governemental report called ‘modernisering activiteiten levende dieren en levende producten’ showed that the supervision in the meat industry was dramatic:

Toezicht bevordert de naleving van in beleid en regelgeving vastgelegde normen door regels te handhaven. De uitgebreide hoeveelheid nationale regelgeving, die uitstijgt boven Europese regelgeving, heeft bij het Nederlandse bedrijfsleven de bereidheid tot naleving van regelgeving doen verminderen. Aan de zijde van de NVWA hebben diverse interne problemen geleid tot een vermindering in de kwaliteit van toezicht en handhaving.

This report is not the only source that confirms low inspection standards. General Inspector Kleinmeulman looked at the opinion of the European Food and Veterinary Office (FVO) which checks the quality of the audits in Europe. The FVO reported that there are ‘qualitative implementation problems with the control of livestock transportation’ Kleinmeulman concluded that the bottom line of control is nearby or already exceeded.

**Subquestion 2.2: What is the position of whistleblowers in this case?**

This report was tucked away by the NVWA for over a year. A whistleblower, who resigned because she thought that the NVWA was not guaranteeing public health and animal welfare, brought this report to the daylight: she showed the report to ‘Stichting Varkens in Nood’ and

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100 http://www.bvkds.nl/Home.aspx
101 Investigation report VWA: modernisering activiteiten levende dieren en levende producten 2007
102 Letter to the ministers of Health Welfare and Sport & Agriculture, Nature and Food Quality, October 8 2007
Chapter 2 – What can we learn from examples of whistleblowing?

‘Dier & Recht’. The report spread very quickly and the rural/local media wrote a lot about it. The Second Chamber questioned the responsible minister and she was put into abashment. The whistleblower did not make her very popular by starting this whole situation and also the ministry was renowned for blind obedience to orders. Therefore the whistleblower was judged because she leaked vulnerable information. The judge found the whistleblower guilty because she did not use the ministry’s whistleblowers policy. But we looked the whistleblowing policy up and found this:

This is quite strange because the whistleblower reported the mistakes in her own written report. So actually her job is to report the mistakes to her manager and that is exactly what she did. So in that perspective she utilized the whistleblowing policy. But the manager did not do anything about it in the first place so therefore she brought the case to light by sending it to various animal welfare foundations. Although the whistleblower was found guilty she did not get a punishment because the court thought that reporting this atrocity was a noble deed so in this case out-of-court settlement (also called ‘rechterlijk pardon’) was justified.

This lawsuit obviously has consequences, not only for the whistleblower herself but also for the remaining employees of NVWA. The lawsuit is an example of what happens when you let the cat out of the bag. Employees will be more anxious to report mischief within the organisation, and if they do their reports are anonymously. Thus a major effect on potential whistleblowers.

Subquestion 2.3: What were the results after whistleblowing?

So the whistleblower had been to court, case closed. That is not what really happened. The whistleblower did a good deed by whistleblowing but did it have any results? Was it worth all the trails and effort it took? That is what we will discuss here.
To find out if there had been any improvement since the whistleblower revealed the report, we will look to the same report but a year after the whistleblowing.

103 Uitgebeend Marcel van Sifhout
104 WOB-verzoek klokkenluidersregeling ministerie van Landbouw 19 april 2006
105 Uitgebeend Marcel van Sifhout
Chapter 2 – What can we learn from examples of whistleblowing?

According to the source a lot of changes have been made but none of them are started after 2007’s report, so therefore we can conclude that whistleblowing was not worth the effort it took. The few changes which have been added do not actually imply actions; therefore the effect of the actions is doubtful. Fortunately, it did raise awareness and criticism, meaning the sector itself might take initiative to improve the situation.

Meat Processing Company

Subquestion 3.1: Why did we visit to a Dutch meat processing company?

To find out ourselves how common whistleblowing within an organisation is we wanted to visit a processing facility. We would walk around the facility and try to notice if we saw some of signs mentioned before such as swearing at employees or veterinarians for example. We contacted several companies such as Gebr. Van Der Mey BV, VION Food Group and Wouters BV. None of these companies wanted to help us, the found it inappropriate or did not reply at all. Even a friend of Philippe who is doing an audit about fraud and traceability difficulties could not help us because the sector is not really fond of attention and visitors. Luckily a friend of him is a co-

Investigation report VWA: modernisering activiteiten levende dieren en levende producten 2007
owner of a meat processing facility in Amsterdam which might be an opportunity to get inside a company.

Subquestion 3.2: How was the visit to a Dutch meat processing company?

On the 17th of November 2014 we travelled with the co-owner to Amsterdam. During a conversation, he clearly stated that everything could be noted or discussed in our CCP, but without mentioning any names. We agreed.

We started in the slaughtering area, where 1.300 animals are slaughtered every day. The first thing we noticed was that most of the employees were Polish. The co-owner told me that about 70% of their 350 employees were from eastern-Europe. To solve problems in communication, the line managers were Polish too, those line managers speak both Polish and Dutch to break language barriers and make sure that the job is done properly. However this does increase distance between higher management and employees. There was not much to see except that the employees looked satisfied with their jobs, the managers were very friendly and the co-owner was very well acquainted with the goals and rumours within the company.

After seeing the production areas we went upstairs to the higher management and secretary. Luckily I had the opportunity to meet the confidential. She told me that she was not very busy and most employees are satisfied with their jobs, she never gets complains and fraud is not often reported. She did not speak polish and there was no Polish confidential which means most of these employees do not have the ability to report mischief. Even though the confidential told me that fraud was not likely because the company is a family business which is producing high quality products as long as it exists, fraud is not necessary because the high quality products are their trademark instead of large volumes for a low price. This did not sound very plausible to me because every company can enter in bad weather (financially), and then fraud will be more likely according to Cressey’s Triangle. I also spoke to the veterinarian responsible for the company, a woman from Belgium. She told me that the NVWA was creating a difficult environment for the veterinarians to work in, due to the increasing working pressure and expanding bureaucracy. The Veterinarian told me that she heard that some colleagues of her were threatened by managers from other companies just because they were doing what they are supposed to do: guaranteeing food safety. Despite the high pressure and the bureaucracy she still tried to do her job the best she could, but sometimes when it is very busy e.g. before Christmas the pressure is too high and she admitted the quality of the audits will drop.

The visit was very useful to confirm our sources, even though we were not allowed to write everything down and some questions could not be answered seeing the company’s policy. The conversation with the veterinarian was very useful too because it confirms how much power the meat industry has. This makes clear that Corporate Social Responsibility is necessary within the sector.
Conclusion

In this question we paid attention to the question: which lessons have we learned from these scandals and which culture is prevailing in the company? By taking VION as an example and further looking into the government, we came up with the following conclusion.

As we assumed every commercial organisation strives for profit. The only difference within the meat industry is that the sector has a huge responsibility, food safety is essential and both companies and the government are not able to guarantee this. But there is a chance that our food will get safer because of the general code of conduct within the meat industry which encourages Corporate Social Responsibility.

The cases we have studied show that fraud is more likely to happen if all three legs of Cressey's triangle are in the advantage of the impostor, but opportunity is the most important one, therefore governmental audits have to happen more often and have a higher quality.

The facts that we were not easily accepted by meat processing companies and we could not write down any names, already emphasises the culture and the transparency in the meat processing industry. This also causes suspicion and rumours to grow and one day it will only take one whistleblower to make the headlines.

As we have seen, the position of the whistleblower in the meat industry is very weak, because of the threatening by managers and there is no where employees can complain (read: language barrier). Even the government does not have an effective whistleblowers policy and even punishes its own employees for doing a morally good thing. This also illustrates the statement of Chapter one: the whistleblowers policy needs more regulation.

The situation is far from perfect and we hope that we can come up with an idea to improve the position of the whistleblower. By doing this, employees will reveal scandals which would not be revealed if we did not take action on the position of whistleblowers.
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The law proposal of the current government for the future

Introduction

In the introduction of chapter 1, we outlined an example of a success of a whistleblower: he earned millions of dollars. All due to one law in the United States of America. Is our country joining in on those ideas and are we finally coming with adequate regulations and laws? It is up to the senators in the First Chamber in the Netherlands. A law proposal is sent from the Second Chamber to the First Chamber. In the coming paragraphs, we will explain the current (1-1-2015) official law proposal 33.258. Besides the analysis of the law proposal, we will also look at the problems it does not cover or the problems it raises. This will be a guideline to the solution we want to come up with for this issue in Chapter 5.

Subquestion 1: What is the status of the law proposal?

The proposal was submitted by a broad range of parties: SP, CU, 50+, PVDA, D66, GroenLinks and PVDD, with Pieter van Vollenhoven as advisor and Plasterk as representative advisor for the cabinet. It is called the Huis voor Klokkenluiders (HvK). Also other people, like former whistleblowers, were involved in the process, before it was presented to the Second Chamber. This is a special law proposal, since it is submitted by the Second Chamber itself, instead of the cabinet. Which means a member of the non-governing parties submitted it (Van Raak, SP). It has been introduced in May 2012. The debates in the Second Chamber have been taking place around June 2013, October 2013 and December 2013. Before those debates, the Raad van State gave advice on the law proposal. After quite some changes, it was approved on the 17th of December 2013.

The First Chamber is now (2015) discussing the law proposal and has already asked for extra time to debate upon it. Until the beginning of 2014, there had been time to make the last appropriate changes to the law proposal. This written preparation is the last time anyone can suggest changes to the law proposal. Now, the law proposal has undergone all changes and is debated for the first time in the First Chamber on the 20th of May 2014. Van Raak (SP) wants to make some changes to the proposal, after it has been discussed and thus there will be a new debate and a new law proposal in the future.

Underneath, you can find the voting results of the Second Chamber:

109 http://www.eerstekamer.nl/wetsvoorstel/33258_initiatiefvoorstel_van_raak
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Subquestion 2: What are the general outlines of the Huis voor Klokkenluidders?

The general idea of the law proposal is to strengthen the position of whistleblowers in the Netherlands, since the current situation lacks laws and regulations. The law proposal aims to prevent social and national misconducts which can harm the greater good or the public safety. For example: governmental fraud, environmental damaging and large scale exploitation of workers. Ad Bos, a whistleblower in building sector\(^\text{110}\), is the perfect example for the submitters of the proposal to show a case which could have been solved before it took such large scale. Ad Bos is therefore frequently mentioned when debating this issue. The former named goal of the submitters, is reached by the following ideas\(^\text{111}\):

- The HvK is a part of the Ombudsman organisation, which will advise and investigate whistleblowers cases

\(^{110}\) http://nl.wikipedia.org/wiki/Ad_Bos

\(^{111}\) http://www.tweedekamer.nl/downloads/document?id=ac7fc591-1b4f-4e27-8c2e-d875c4a06d6a&title=Voorstel%20van%20wet.pdf
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- It will cover the private and public sector
- At this HvK, whistleblowers can submit their report, ask for advice and ask for financial support, after the whistleblower and its report are checked for validity
- The HvK will, together with the associated company and whistleblower, look at the case and come up with a solution
- Evidence, investigation and solutions are not binding and cannot be used in a court case, this would expand the willingness of the employer to cooperate
- The HvK will assist the whistleblower in the process and might redirect the whistleblower to a different organisation, such as a government supervision organ or the Public Prosecution Service
- It will give certain whistleblowers protection of labour, so they cannot be fired by their employers
- The HvK will be easily accessible and open for any whistleblower
- The HvK will also comprise of a ‘Fonds’, which will provide whistleblowers a compensation for a loss of income after being fired due to being a whistleblower. This financial compensation will only be offered if you are in a financial unstable position. This compensation will make it easier for employees to submit a report, as their financial position will not be affected as much.

Thus the Huis voor Klokkenluiders will a) advise b) investigate c) protect d) guide e) financially support f) redirect and refer g) come up with a solution h) provide procedures and regulations along with legislature

Besides the implementation of the HvK, the law proposal also contains further legislature. It will set up a definition for the term whistleblower, draw characteristics of whistleblowers and outline requirements for their submitted reports. By adding those parts of legislature, the submitters wish to give whistleblowers a formal status and recognition. Moreover, it provides the society some information, knowledge and understanding of the topic.

The Huis voor Klokkenluiders provides a wide range of solutions and tries to cover multiple aspects which are lacking in the current legislature.

Subquestion 3: What is the official advice on the law proposal?

The law proposal is debated on in the Second Chamber. Before it was sent to the Second Chamber, the Raad van State, an advising commission, got the opportunity to react to the proposal and suggest changes. In order to follow the chronological order, the advice of the Raad van State will be discussed first.
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The Raad van State (RvS)\textsuperscript{112} gave the following reaction to the law proposal Huis voor Klokkenluiders, submitted by Van Raak (SP)\textsuperscript{113}\textsuperscript{114}\textsuperscript{115}: 

- Whistleblowers should first report suspicions of misconducts internally, before going to the HvK. Furthermore, the law proposal should force organisations to have a whistleblower policy.
  - The submitters agree and amend the law by adding the obligation for all organisations with more than 50 employees to have a whistleblower policy
  - The submitters do emphasize the difficulty of reporting internally. It can lead to a conflict, which does not result in research, nor solutions.
- The RvS sketches the investigation procedure and the changes in internal/external reporting:

\begin{center}
\textit{De onderzoeksprocedure kent de volgende stappen:}
\begin{itemize}
  \item de werknemer doet een melding en kan daarbij een verzoek voor een onderzoek indienen,
  \item het Huis beoordeelt in een vooronderzoek of het verzoek voldoende onderbouwd is. Het stelt ernaar dit onderzoek binnen zes maanden af te sluiten,
  \item voor het eigenlijke onderzoek geldt een streefomrijn van een jaar,
  \item is het onderzoek afgesloten, dan zendet het Huis een conceptrapport aan de werkgever en de verzoeker voor commentaar,
  \item indien het commentaar daartoe aanleiding geeft, wordt het rapport aangepast.
\end{itemize}
\end{center}

\begin{center}
\textit{Schematisch voorgesteld zien de bestaande regelingen en het wetsvoorstel er als volgt uit (de wijzigingen in het wetsvoorstel staan onderstreept):}
\end{center}

\begin{center}
\begin{tabular}{|c|c|}
\hline
\textbf{Overheids personeel} & \textbf{werknemers private sector} \\
\hline
\textbf{interne meldingen} & \textbf{procedures voor meldingen van misstanden op basis van Ambtenarenwet} & \textbf{- verbod van benadering} \\
\hline
\textbf{externe meldingen} & \textbf{- tijdelijk: informatie, advies en ondersteuning door Commissie advies en werkpunt klokkenluiders} & \textbf{- financiële steun door Fonds voor Klokkenluiders} & \textbf{- verbod van benadering} \\
\hline
\end{tabular}
\end{center}

- The RvS advises the submitters to extent the explanation of the law proposal. It finds clauses which are barely explained, nor backed up. Furthermore, the RvS reaffirms that whistleblower policies usually only work in organisations in which there already is a good business culture: it is actually needed in the organisations of which the culture and atmosphere around and among labour and employees are not sufficient enough.

\textsuperscript{112} http://www.ajbonline.nl/portfolio/raad-van-state/
\textsuperscript{113} http://www.tweedekamer.nl/downloads/document?id=5f065701-fcbb-40f4-a6b1-55944c201d3e&title=Memorie%20van%20toelichting%20zoals%20gewijzigd%20naar%20aanleiding%20van%20het%20advies%20van%20Raad%20van%20State%20%20.pdf
\textsuperscript{114} http://www.tweedekamer.nl/downloads/document?id=8ad64e3b-f402-423e-8b59-d4d7af47ed4e&title=Voorstel%20van%20wet%20zoals%20gewijzigd%20naar%20aanleiding%20van%20het%20advies%20van%20Raad%20van%20State%20.pdf
\textsuperscript{115} http://www.tweedekamer.nl/downloads/document?id=b11d72d8-441f-4675-872a-6e65c40535b6&title=Advies%20van%20raad%20voor%20aanleiding%20van%20state%20en%20reactie%20van%20indieners%20.pdf
The RvS is afraid that this law proposal will only cover the extreme misconducts which deal with large groups of population and that the small reports of misconducts will be skipped. This would make the House inaccessible and thus not useful.

The RvS is worried that multiple investigations on one issue will occur: 1. the Public Prosecution Service, 2. the HvK. The RvS prefers the investigation of the OM/PPS, since that is the legal investigation. An additional investigation after the investigation of the OM/PPS is always an option. Furthermore the RvS sees trouble in two other investigations: 1. Inspecties and Toezichthouders, 2. HvK.

- The submitters state that the HvK and Inspection Services (or Toezichthouders) will probably work together. The HvK might even ask the Inspection Services to do the investigation, since they are the experts.
- The submitters partly agree to choose for the legal investigation of the PPS/OM, therefore a clause is added which states that the PPS/OM will first execute their investigation and afterwards the HvK is allowed to do additional research if they believe it is needed.

But in the meantime, the employee would not get labour protection, since only the HvK can grant it. So during the time the PPS/OM executes their investigation, the whistleblower can be fired.

The RvS believes that the protection of the whistleblower exceeds some borders: the whistleblower cannot be fired during the investigation and for a year after the investigation is finished, furthermore they cannot be disadvantages over other employees, and additionally they get financial support and compensation. This could cause employees to view whistleblowing as an act of self-enrichment and in order to gain money and labour protection.

- The submitters disagree. They believe that the pre-investigation is sufficient to filter the fake-whistleblowers who wish to make a profit of whistleblowing. The pre-investigation researches if the whistleblower and its report is legitimate, if not, there will not be an official investigation, nor support or protection.

Since the HvK will become part of the National Ombudsman organisation, the RvS wonders if this is needed.

- The submitters have chosen for this approach, since it makes the proposal cheaper and the National Ombudsman already deals with quite some whistleblowing cases. Furthermore the National Ombudsman has national recognition and reputation, which could give a solid platform to the new organisation. The HvK will not be implemented in the legislature of the National Ombudsman: The HvK will only be attached to the National Ombudsman.

After all changes are adopted, the RvS gave positive advice on the law proposal. The advice of the RvS is often used in debates as objective ‘truth’.
Subquestion 4: What are the results of the debates in the Second and First Chamber on the Huis voor Klokkenluiders?

Since the Second Chamber themselves submitted the law proposal, the structure of the debates are slightly different\(^\text{116}\), Minister Plasterk functions as representative of the Cabinet and advisor. The submitters are found in the place of the Cabinet (see photo)\(^\text{117}\), but they can also vote upon their own law proposal, since they are part of the chamber. This results in a quite easy reachable majority. Nonetheless, this does not mean there is no criticism on the law proposal. In the coming paragraphs we focus on those debates and explain the remarks of the Members of Parliament.\(^\text{118}\) This way of elaborately discussing the law proposal gives us the opportunity to clearly understand the problems which need to be covered with any solution dealing with whistleblowers. Furthermore it shows how a solution should be structured and which solutions do not work. Additionally, the debates explain common failures regarding the establishment of an organisation. Also the view and perspective of all political parties becomes clear.

Objections and remarks Second Chamber\(^\text{119,120,121}\)

- The HvK will become part of the Nationale Ombudsman, however this interferes with the constitution Article 78.1 and 78.4. A motion is submitted to change the HvK into a ZBO (self-reliant committee or Zelfstandig Bestuurs Orgaan\(^\text{122}\)). A ZBO is an organisation which is under supervisor and guardianship of the Minister, but is not part of the Ministry. The Minister has control over the functions of the ZBO.
  - This motion is turned down, since the submitters believe a ZBO can be frail when whistleblower cases are submitted about the Ministry itself to which the ZBO is linked (A ZBO is always linked to a Ministry).
  - The submitters of the motion do not believe that the HvK will be affected by the Ministry/Minister to which it is attached.
- If a public organ does not function well, they can submit a complaint at the National Ombudsman. When people which to complain about the HvK it would be dubious submit the complaint at the National Ombudsman, since the HvK is part of it.

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\(^{117}\) https://www.sp.nl/nieuws/2013/12/wet-huis-klokkenluiders-aangenomen

\(^{118}\) http://debatgemist.tweedekamer.nl/debatten/initiatiefvoorstel-huis-voor-klokkenluiders

\(^{119}\) http://debatgemist.tweedekamer.nl/debatten/initiatiefvoorstel-huis-voor-klokkenluiders-0

\(^{120}\) http://debatgemist.tweedekamer.nl/debatten/initiatiefwetsvoorstel-huis-voor-klokkenluiders

\(^{121}\) http://debatgemist.tweedekamer.nl/debatten/initiatiefwetsvoorstel-huis-voor-klokkenluiders

\(^{122}\) http://www.rijksoverheid.nl/onderwerpen/rijksoverheid/zelfstandige-bestuursorganen

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- The law proposal will cost 750,000 € in order to start and 2,000,000 € per year to keep the HvK operational. This will be financed by the Ministry of Internal Affairs. The Members of Parliament believe this amount is too high and not based on any facts or figures.

- The labour protection which is offered to whistleblowers can be around two years. This is such a long period, not just for the whistleblower, but especially for the employee. There might be employees trying to take advantages of this.
  - There is a pre-investigation which will look into the report to see if the whistleblower’s case is valid. Thus the protection spongers will be filtered.

- Research shows that investigation and advice cannot be done by the same person nor by different people in one place. This will affect the investigation and the investigation will lose its objectivity.
  - Cooperation is needed, but the investigation and the advice are not done by the same people. So this problem is taken rid of.

- This law proposal is only applicable to employees with a long-term labour agreement with their employers. Thus this does not cover all workers in the Netherlands.
  - People without an agreement cannot be offered protection. The rest of the proposal counts for everyone in the Netherlands and everyone can go to the HvK. The law proposal has been changed, so also students who take an internship or individuals with a project contract are offered protection. This enlarges the range of this proposal.

- The ‘Fonds’ which is part of the HvK is not needed anymore: there is labour protection and there will be no expensive judicial procedure, since all processes will be taken care of by the HvK.
  - The Fonds is now removed from the law proposal (!).

- Since the HvK will do research, it might interfere with other investigative bodies. The Members of Parliament believe that investigation by the HvK should not take place, since it might obstruct the investigation upon the same case by OM/PPS (Public Prosecution Service).
  - The OM/PPS researches the question of guilt, whereas the HvK wants a factual investigation. The purpose of the factual investigation is to come with a solution, which does not deal with guilt. This makes it in order to have two different investigations.
    - This will result in weird conversations: in the court of law, the company will not reveal facts which do have been mentioned in the HvK research. However you cannot use it as proof → this can cause frustration and ineffectiveness. E.g.: company will admit to fraud in the company and give whistleblower protection. The same company must go to court, but the company will not reveal any information and the whistleblower’s information is not enough, so the judge decides that the whistleblower is not legitimate and the company is not guilty to fraud.
  - The OM/PPS and HvK will come with a standard procedure to make two lateral or parallel investigations efficient and unobstructed.

- The OM/PPS needs to cut back by 25% on their budget, however this proposal will cause them extra pressure. This can result in insufficient investigation or unrecognized whistleblowers to prevent whistleblowers.
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- It is doubtful in what way the HvK will be recognized by companies and the law. So there might be obstruction, since companies and organisations are not willing to cooperate with the HvK.
- Supervisory Organs and Inspection Services now play the role, which HvK might partly take over.
  - The expertise will be used in the HvK and those organisations might be asked to do research for the HvK. Their position, knowledge and power are recognised by the HvK.
- Are we, as country, willing to accept foreign whistleblowers, such as Snowden? This law proposal only focuses on people working in the Netherlands. There is no option for Dutch people working in other countries.
  - The HvK only focusses on Dutch employees.
- In Article 19.2 it shows clear signs that this law proposal was made by a social democratic party (SP). The article states that whistleblowers who have enough money, will not be granted money of the ‘Fonds’. This statement is not in line with the idea that whistleblowers should not have financial negative results of being a whistleblower, no matter what.

**Artikel 19**

1. De uitkering wordt naar redelijkheid en billijkheid bepaald.
2. Een uitkering blijft achterwege indien de financiële omstandigheden waarin de aanvrager verkeert zodanig zijn, dat de onkosten of andere schade zonder overwegend bezwaar door hem of degene van wie hij voor zijn onderhoud afhankelijk is, gedragen kunnen worden.

- The basic principle is (after an amendment) that whistleblowers always first report internally before going to the HvK. In order to reduce friction between employer and employee and to give the company/organisation the knowledge to do something with the report of misconduct.
- There is currently an OIO (Onderzoeksraad Integriteit Overheid), the VVD suggests to set up a OIM (Onderzoeksraad Integriteit Marktssector) instead of HvK which can operate in the private sector. (So: OIO for public sector, OIM for private sector).
  - How will social and national issues stretching through public and private sector be solved? The OIO will not cooperate with the OIM. The HvK does solve those extensive problems.
  - Investigation will not be efficient or practical, since the range of investigation will be limited in each OI.
- The HvK is for societal whistleblowers issues. However what will happen if a whistleblower has a report of misconduct, but the report does not stretch to the extent of societal issue. There will not be an Adviespunt Klokkenluiders to help those people.
  - Advice can still be given to any whistleblower, however the labour protection will only be given to those who have a societal report of misconduct.
Thus this heightens the threshold and accessibility of the HvK and dramatically reduces the amount of whistleblowers to which the HvK fully applies.

Objections Cabinet
(Advisor/representative of cabinet: Minister Plasterk)
- It is better to wait for the evaluation and reflection on the Adviespunt Klokkenluiders before we adjust/propose a new law.
  - The submitters have already waited quite some time, it is not the fault of the submitters that the government took initiative by setting up the Adviespunt Klokkenluiders, while there was a law proposal in progress.
- Advice and Investigation are not clearly and not sufficiently separated, which causes interference of the advising staff with the investigative staff.
- Allocating the HvK as part of the National Ombudsman causes constitutional objections
  - The Raad van State said it would not cause problems
    - The RvS is not an organisation which decides if something is against the constitution or not.
- It drastically changes the role of Toezichthouders and Controlling organisations.

Changes after the debates in Second Chamber
- The ‘Fonds’ is removed
- Whistleblowers should first report internally before going to the HvK
- It is for all employees e.g. also interns and volunteers.

Results of the debates in Second Chamber
The proposal has passed with a clear majority during the voting procedures. This was a great moment for the Netherlands, since this is the first full-range legislature to be passed by the Second Chamber regarding whistleblowers.

The First Chamber
As mentioned, the First Chamber has discussed the law proposal for the first time and is investigating whether an adjusted law proposal should be made. Senators especially have objections regarding:
- Advice and Investigation being in the same organisation
- Allocation to Nationale Ombudsman

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123 http://www.eerstekamer.nl/wetsvoorstel/33258_initiatiefvoorstel_van_raak
124 http://www.eerstekamer.nl/9370000/1/j9vvhwtnzpbzzc/vjgajdv0dxyq/f=y.pdf
125 http://www.eerstekamer.nl/9370000/1/j9vvhwtnzpbzzc/vjhfda0u2azg/f=y.pdf
126 https://www.eerstekamer.nl/nieuws/20140520/wetsvoorstel_huis_voor
127 http://www.eerstekamer.nl/9370000/1/j9vvhwtnzpbzzc/vjlcj2vt4qzi/f=y.pdf
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- The different investigations (OM/PPS, Supervisory Bodies and HvK)
- One organisation for concerning Public and Private sector

Since those objections are based on objections of the Second Chamber, they do not demand an elaborate explanation.

A possibility could be to set up a 'Bijzonder Zelfstandig Bestuurs Orgaan - bZBO' which is an independent organisation, linked to a minister, but the minister does not have extensive power over the organisation, which makes it more independent and objective. A lot of parties (VVD, SGP, D66, CDA) request procedures and protocols to make sure there is no interference with the different investigative institutions.

Basically the first debate only comprises of a summation of all parties’ objections.

In the second part of the debate, the senators’ questions were answered by the Minister and Van Raak (submitter). Van Raak wants to look at the possibility of setting up the organisation as a special ZBO. Furthermore, Van Raak believes it is not possible to make all the protocols and procedures for investigations, since it will naturally go by the most efficient procedure. Furthermore, we must not forget that also Inspection, Supervisory Organs and the Public Prosecution Service can be subject to a report of misconduct. Lastly, the separation of advice and investigation will be put down in words in the law proposal.

Update: 129 130 131 A new law proposal has been submitted, which suggests the following changes:

- The HvK will become a Zelfstandig Bestuurs Orgaan, in which the Minister does not have the normal rights
- Investigation and advice will become separate departments
- The costs are aimed at 4.25 million in the first year, afterwards 3.5 million per year (costs are way higher than expected)
- The investigation department is not allowed to do investigation in the private sector at the organisation, it can only ask for documents
- The labour protection is enlarged and now also covers disadvantages the whistleblower faces, such as no promotion.

The First Chamber currently (2015) awaits the debate on the new law proposal.

The previous elaborate explanation of the debates is used as a basis for the commentary of external parties involved and for the analyses of this law proposal. Subsequently, the analyses can function as fundament for drawing up solutions for the last chapter.

131 https://smartnewz-arbeidsrecht.kluwer.nl/nieuwsberichten/wetsvoorstel-wijziging-wet-huis-voor.78523.lynkx
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Subquestion 5: How do associated organisations react on the law proposal?

Since the law proposal has an effect on both the public and private sector, major organisations and parties have reacted to express their opinion. Just like this research, the search for solutions is always present. Surprisingly, when the law proposal was published, new solutions of other parties were also published. Apparently, pressure has increased to come with solutions in order to fight solutions which are not in someone’s favour. The VNO-NCW - MKB (business branch organisation), the Expertgroup Whistleblowers, the Procureurs Generaals (Public Persecution Service), the Inspection Council, Supervisory Organisations and a group of lawyers have all submitted official reactions. In order to show the different opinions and interests, the reactions will be discussed.

**Expertgroep Klokkenluiders**

As mentioned in Chapter 1, the Expertgroep Klokkenluiders fulfils an important position in our society. The expertise and advice of ex-whistleblowers can give solid support or oppression to stated ideas, concepts or statements. The Expertgroep Klokkenluiders\(^{132}\) has reacted positively on the law proposal and emphasizes the importance of a governmental solution. However it does state the importance of a Fund to compensate whistleblowers. This idea was removed from the law proposal in the Second Chamber. The ex-whistleblowers in the Expertgroep stress their own expertise as factual support to show the Fund can actually be of good help. The Expertgroep has actually taken part in the designing of the law proposal.

**Supervisory Organisations**

The national supervisory organisations play a special role in Dutch society. They control a specific part of the public or private sector in order to guarantee the obedience of the law and the correct spending of the money. Since part of their work includes processing complaints and reports of misconduct (whistleblowers), they overlap with the work the Huis voor Klokkenluiders (HvK) will do. The Supervisory Organisations\(^{133}\) handed in a collective response to the law proposal. Those Supervisory Organisations include: Authority Consumer and Market, Authority Financial Market, Gambling Authority and the Health Care Authority.

Their response shows they get quite some information of organisations and employees regarding the obedience of the law. This also contributes to the enforcement of the law and therefore they agree with the goal of the law proposal. On the contrary, the investigation done by the HvK will, according to the Supervisory Organisations, place a threat to the investigation done by the Supervisory Organisations. To add to that, they claim the HvK does not have the investigative knowledge or knowledge in the field to execute a sufficient investigation.

Another, not earlier mentioned, objection to the complaint is the time lapse of procedure: the employer/organisation is informed if an employee has submitted a report of misconduct. This


\(^{133}\) [https://www.acm.nl/nl/download/publicatie/?id=12207](https://www.acm.nl/nl/download/publicatie/?id=12207)
gives the employer the opportunity to delete or make up information which would act upon the legitimacy of the investigation. Additionally, the Supervisory Organisations are convinced that the amount of people/layers between an organisation and the Supervisory Organisation should be as low as possible in the case of a report of misconduct concerning illegal activities. Lastly, their solution would be to include in the law proposal that the HvK will first inform the concerned Supervisory Organ before informing the employer/organisation.

**Procureurs Generaals**

The Procureurs Generaals of the Public Prosecution Service form the highest authority in the Organisation\(^{134}\). One of their tasks is to give advice on legislature. Therefore the Procureurs Generaals have also responded to the law proposal\(^{135}\). According to the Procureurs Generaals, real dual or lateral investigations (e.g. PPS/OM investigates on the same case as the HvK) do not frequently take place and are difficult to recognise. Usually it is not necessary to separate the investigations or to bring one to a hold. Thus the law proposal does not need to include a procedure for this. Nonetheless, the Procureurs Generaals suggest an amendment making it possible for the HvK to cease their own investigation if they realise other investigations take place. "All in all, their reaction was quite relaxed", says Van Raak.

**Inspection Council**

The Inspection Council represents all Inspection Services of the Netherlands (e.g. Education Inspection Service). The Inspection\(^{136}\) Services also execute investigations, like the HvK. This might cause, like the PPS/OM and HvK, investigational interference. At the minimum, the Inspection Council requests a procedure to guide different investigations. On top of that, they actually believe the HvK should not have the right to execute investigations, since Inspection Services have the best position to do this. They prefer that the HvK will only focus on advice, redirection and financial compensation.

**Business Branch Organisations (VNO-NCW - MKB)**

One of the problems for whistleblowers is the difference in being a governmental employee or a business employee. The HvK also focusses on the business employee and makes no difference in the two categories. The "Business Branch Organisations"\(^{137}\) have reacted on this law proposal in a rather negative way. Furthermore they introduced their own solution.

The reaction states the importance of whistleblowers and that the reports of misconducts should be dealt with internally. It suggests freedom for enterprises to solve the problem themselves and asks for self-regulation. The answer of the submitters of the law proposal state that this self-regulation is not taking place and therefore they came up with this solution.

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\(^{134}\) [http://nl.wikipedia.org/wiki/College_van_procureurs-generaal_%28Nederland%29](http://nl.wikipedia.org/wiki/College_van_procureurs-generaal_%28Nederland%29)


Furthermore you should not ask companies to take care of it themselves, since the chance of a fair research is slim.

The Branch Organisation suggests an Onderzoeksraad Integriteit Marktsector (Investigation Council Integrity Private Sector). This would operate like the existing Onderzoeksraad Integriteit Overheid. It wishes to launch it the first of February 2015 (when the debates in the First Chamber are still taking place for the HvK). This proposal is not accepted by the submitters of the law proposal, since it does not cover the cross sector reports of misconduct. Furthermore it is not allowed to give financial compensation or any rights, like the labour protection for whistleblowers. (In February 2015, no sign of the OIM was present and there are still no official publications of it on the website of the VNO-NCW)

All in all, the Business Branch Organisations advise negatively on the law proposal and acts competitive by also coming up with a solution and trying to implement it earlier.
Dirty Laundry

Accountants, lawyers, tax consultants and advisors: the experts on procedures and business culture. People in those areas have reacted in a magazine article in 2008\(^{138}\) to see if Fund or other central regulation was needed for whistleblowers and to discuss the culture. The title of the article: The dirty laundry. It shows us the view and culture regarding whistleblowers and different perspectives concerning the current issue.

They all emphasize the need for a good and solid whistleblowing policy, companies should always see the whistleblowers as most worthy employees and treat them with respect. Unfortunately, the FNV Branch Organisation advises whistleblowers not to submit a report of misconduct, since it negatively affects the position of the whistleblower.

According to labour law lawyer Franck van Uden (Baker & McKenzie), the judicial court will always prevent whistleblowers from negative consequences. However, the former senior equity derivate trader at Fortis serves as an example of the court working against whistleblowers and not giving them labour protection or financial compensation.

Jannie Mooren (Stichting Arbeid) believes the government is controversial on the topic. On one hand they encourage whistleblowers, on the other hand they do not protect whistleblowers, nor does jurisprudence do so.

A Fund to compensate whistleblowers has been brought up by former whistleblower Ad Bos in 2004; however both governments in 2004 and 2007 rejected the idea. Now also in 2014 it is rejected.

Rewarding whistleblowers has resulted in 15 billion dollars for the American government between 1986 and 2005. However according to Sylvie Bleker-van Eyk (Ernst and Young) still ‘a bridge too far’ for the Netherlands. It stimulates and compensates whistleblowers, but can be morally wrong.

To conclude, all the experts emphasise the same as the law proposal: a solid protection and definition for whistleblowers. However, a Fund or an ‘American reward system’ are still areas which not all parties agree to and might be too controversial for our Dutch Polder Model.

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Subquestion 6: What is the overall analysis of the Huis voor Klokkenluiders?

All positive and negative aspects of this law proposal have been elaborately explained in this chapter. However what is the careful and objective analysis of it? The positive and negative responses will be listed in order to analyse the law proposal. This general overview gives us a helicopter view to examine the law proposal as a broad piece of legislature.

Positive aspects
1. It provides labour protection for whistleblowers
2. It provides advice and investigation for whistleblowers
3. It gives a clear definition on employee, employer and whistleblower
4. There is a pre-investigation to see if the whistleblower is legitimate
5. The investigation and research is not done to blame a party, but to collectively (employee and whistleblower) come with a consensus.
6. No information of the HvK can be used in courts
7. It enforces organisations with more than 50 employees to have a whistleblowers policy
8. It enforces whistleblowers to first report within the organisation
9. It provides a solution for both the public and private sector

Negative aspects
1. Investigation and advice are not fully separated (only be departmental separation)
2. It can interfere with the job of the Inspection and Supervisory Organs
3. It can interfere with the investigation of the Public Prosecution Service
4. There will still be an overflow of organisations: Onderzoeksraad Integriteit Overheid, Expertgroep Klokkenluiders and Bureau Integriteitsbevordering Openbare Sector
5. There is no financial aid or compensation for the whistleblower
6. The contents of the whistleblowers policy can be decided upon individually by every organisation
7. The new definition for a ‘whistleblower’ is narrowed down and excludes many reports of misconducts.

One item has not been mentioned in any debate or report upon the law proposal: the solution is called The House for Whistleblowers. Especially in Dutch, the word ‘voor/for’ can also mean ‘in favour of’. Therefore the title can be read as: a house in favour of the whistleblowers. This might also be the reason for the Business Branch Organisation to respond negatively as the law proposal does not have a neutral title. The reason for this linguistic analysis of the title is that employees of the HvK and citizens can view the HvK in a different way. Moreover it suggests the idea that the HvK will always support the whistleblower, instead of the related company.

To conclude the analyses, the positive aspects outweigh the negative aspects; however the

139 http://www.werknemersbijdeoverheid.nl/overzicht-inhoud/klokkenluider/initiatiewet-bescherming-klokkenluiders
amount of negative aspects does reach a worrisome level. Therefore it is good that the First Chamber did not pass the law proposal yet and a new law proposal is submitted. This new law proposal eradicated some old objections; however the negative aspects stated above still apply.

Conclusion

In order to come with the solution in the Chapter 5, the law proposal functions as a fundament to see what solutions are broadly supported, which culture prevails in businesses and how the structure should be of any solution. In the previous subquestions, the entire law proposal has been carefully examined and looked into from different perspectives (e.g. government, business and parties). However, each perspective is subjective due to beliefs and views: the VNO-NCW&MKB Business view will be negative no matter what, since they have their own solution of which they want it to become the only solution. The VVD (right wing) party is quite close with the business branch organisation, so they will be likely to express themselves negatively in the debates. This example actually took place and shows us the different relations & interests related to this issue. Another example is that the SP (left wing) did not want rich or wealthy people to get any financial aid or compensation for being a whistleblower if the 'Fund' would be included. These two parties want their beliefs to be pursued, but it does not actually improve the situation of whistleblowers in the Netherlands. Fortunately all parties recognised the need and importance of any solution for this issue, since the government has been lacking legislature on this topic.

After the analysis, we can conclude that the law proposal has some interesting elements and will definitely improve the current situation. On the other hand, more issues are to be tackled (content of policies, culture in organisations, overflow of organisations, lack of awareness, financial compensation and extensive window dressing), so this gives us room to either improve the law proposal or come up with other solutions. This foreshadowing idea will be elaborated in Chapter 5. Seeing the fact that the whistleblowers policy will become an obligation for organisation (>50 employees), this will be separately discussed in Chapter 4.

140 http://expertgroepklokkenluiders.nl/wetgeving/toelichting-wet-hvkl/
Chapter 4

How to improve upon the whistleblowers policy?
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One policy for all?

Introduction

As we have seen in our previous chapters, the position of whistleblowers is very weak: they have little legal protection and organisations do not protect them in an objective way. According to Gerrit de Wit (Expertgroep Klokkenluiders) is the present position of whistleblowers too difficult for an average employee, due to all the procedures and types of law which a whistleblower encounters (see attachment 4C). Additionally, we stated in Chapter 1 that employees did not experience the whistleblowers policy at their company as very beneficial for them and that it contains subjective elements. Therefore the situation should be changed. At the moment, the organisations set up a code of conduct and part of it is the whistleblowers policy, in which the organisation registers how they deal with whistleblowers. It is a very powerful document, because it allows employees to report malpractices in a responsible and effective way. According to Houthoff Buruma, it is widely assumed that companies have a so called ‘melding van misstanden regeling’ in this regulation is regulated how employees can report any misconduct they find. Companies do this because of compliance and to be a good employer: this is of course part of window dressing. Most companies have a policy, not only the stock market listed companies, but also small businesses and governmental institutions. The question is, whether this also results in good policies. Is it not necessary that we oblige organisations to have a whistleblowing policy by law?

Most organisations have a ‘melding van misstanden regeling’ or whistleblowing policy. But most whistleblowing policies include flaws, or are not morally right. Others lack content or effectiveness. That is disappointing, because whistleblowers say that the whistleblowing policy did really help them to blow the whistle. If we read between the lines, we mostly see a harsh environment created for the whistleblower to be dealt with. It all seems morally correct in the first place, but as we take a closer look at various whistleblower policies and at the way whistleblowers were treated in the past, we can conclude that not everything in the garden is rosy. For example we take the whistleblower policy of VION Food Group again. In which is said: “The VION Compliance Officers and the Executive Board of VION reserve the right to take whatever action they deem fit in acting upon the results of any investigation undertaken in response to a complaint. In assessing the complaint the interests of the Company will be balanced against the interests of the employee concerned.” This indicates a flaw in the whistleblowers policy, the interests of the company will be balanced against the interests of the employee. From this sentence we can conclude that the company can balance the matter in a very subjective way, because the consequences of whistleblowing will be bigger for the company than for the employee. Then there is another thing, most managers and medical officers will stay

141 Attachment 4B: answers to our questions to Houthoff Buruma
142 VION Food Group code of conduct

WHISTLEBLOWERWSPWS@GMAIL.COM
loyal to the management and that means that most internal whistleblowing organs are subjective. Medical officers are sometimes ‘influenced’ by the management to handle an employee a certain way. That gives the whistleblower another task, namely the task to check which organs are objective and which ones stay loyal to the management under all circumstances. But that does not mean that internal organs are not a way to prevent whistleblowing, the organisation must always have the possibility to solve the misconduct itself, but as soon as the organisation does not take its responsibility, the whistleblower is allowed to go on public report. Facts and figures on internal reporting of misconducts are not available as companies try to hide that information. Therefore, the development in culture, the effectiveness of a whistleblowing policy and the position of whistleblowers is difficult to state.

According to the Dutch Corporate Governance Code article II.1.7 stock market listed companies are obliged to have a whistleblowers policy, but this is not enough because employees are still afraid to report misconduct. According to the Ethics Resource Centre, only 63% of the employees who observed misconduct actually reported it internally.\textsuperscript{143} That raises the question why is this not 100%? Probably because there is a certain fear for reporting, because employees might get a form of retaliation. And that concludes a flaw in the whistleblowers policy and that brings us to this chapter’s main question: how to improve upon the whistleblowers policy?

Subquestion 1: What can we learn from the Public Interest Disclosure Act?

The whistleblowing policy should encourage employees to report misconduct if there is a serious concern about wrongdoing. But what can make a whistleblowing policy encourage employees and what retains them to report misconduct? To find out we will use legal formats from the United Kingdom which obliged companies to have a whistleblowing policy.

In 1999 the United Kingdom putted the Public Interest Disclosure Act into force, after a large amount of scandals of which employees knew that something was going wrong in the organisation but were not able to speak up. Interest in employees grew because they were the critical part of the system that was able to control misconduct within every organisation. Employees should be protected and what followed was an obliged whistleblowing policy for every company.\textsuperscript{144}


\textsuperscript{144} http://www.hapinternational.org/pool/files/whistleblowing-policy-guide-and-template.pdf
Chapter 4: How to improve upon the whistleblowers policy?

For whom is the act in force?

The following people are protected by the Public Interest Act: 145

- Employees
- Agency workers
- Trainees
- Self-employed workers, if working off-site or supervised

The act claims that every employee can be protected against the consequences of whistleblowing as long as the public interest is in danger in any form. The employee must always act in good faith and have reasonable grounds for raising concerns, such as:

- Criminal Offences
- Breaches of legal obligations (including negligence, breach of contract, breach of administrative law)
- Miscarriages of justice
- Health and safety
- Damage to the environment
- Corruption
- The concealment of any of the above

Procedural requirements

The act also registers procedural requirements, if an employee decides to spread his concerns with the beat of drum, these (unjust) concerns will severely harm the organisation or the sector the organisation is operating in.

Therefore the employee should first inform his direct manager or the human resources department with his or her concerns before putting it into the publicity. 146 It’s essential that the organisation offers various ways to report misconduct internally because this encourages employees to report. The law also allows whistleblowers to discuss the concerns with limited external parties like governmental ministers and prescribed persons. Those prescribed persons can be contacted if it is risky for the employee to discuss the concern with the employer. In the event that the employer will conceal or destroy the evidence the employee is allowed to contact external parties.

By breaking these procedural requirements, the employee does not have the right anymore to be protected by the whistleblowing policy.

The whistleblowing policy must guarantee that the employee cannot be dismissed because he or she raised concerns. If he or she is dismissed they can claim that the dismissal is unfair and will be protected by law as long as they met the requirements above. The employee can go to an

145 https://www.gov.uk/whistleblowing/dismissals-and-whistleblowing
146 http://www.freshfields.com/uploadedFiles/SiteWide/Knowledge/Whistleblowing.pdf
employment tribunal which will decide whether the dismissal is unfair or not. In case it is unfair
the employee will get his or her job back or a financial compensation.

Turn of Burden Proof

As we have seen from the cases in chapter two and the interview with Gerrit de Wit,
whistleblowers can come in severe conditions. The conditions can for example be:
discrimination, threatening or even violence. The organisation will do anything to distinguish
the misconduct or the reporter of misconduct. Therefore the public interest disclosure act
turned the burden of proof. If an employee reports he got into severe conditions by blowing the
whistle it would usually his plight to prove that. But since the public disclosure act has come into
force, the employer has to prove that the severe conditions in which the employee finds himself
are not caused by whistleblowing.147

As we have seen, the legal minimum for a whistleblowing policy is very limited. The policy only
comprises a situation in which the whistleblower is fired; therefore it is necessary that the legal
minimum is extended, so whistleblowers are protected in order cases as well (e.g. ignored for
promotion). We take this minimum as a foundation for the next chapter.

Subquestion 2: What should we add to the United Kingdom’s legal minimum for the Netherlands?

The previous paragraph showed us that the legal minimum (whistleblowers policy for all
organisations and protection for whistleblowers if they get fired) for an organisation’s
whistleblowing company is very limited, by adjusting and extending this legal limited we can
courage employees even more, but what should we add to the legal minimum? Our goal is to
optimize the willingness of employees to report misconduct. We can divide ways to improve
readiness in these categories:

1. General content, reach and tone;
2. Guidelines and rules for reporting;
3. Confidence and anonymity;
4. Protection against sanctions;
5. Confidants;

We will discuss every category in this paragraph.

1. The general content should be clear and understandable for everyone. A complex
whistleblowing policy will not encourage employees to blow the whistle because they do
not understand which consequences it can have for them. A clear reach is important too,

147 http://home.fnv.nl/02werkgeld/arbo/wetgeving/meningsuit/toelichting_op_fnvmodel.htm
because if people are not sure whether the policy is related to them, they will not make us of it. A legal obliged format will therefore raise the readiness to speak up. The tone of the policy is also important, it is very common that the policy formulates whistleblowing as a plight of the employee for example in AEGON’s code of conduct: “If you observe or suspect a violation of the law or of these Rules of Conduct, it should be reported immediately.” It is clear that the organisation wants its employees to report but in a very pushy way, which is not motivating. This is an example of a way more inviting policy made by Philips: “Philips encourages all its employees to report promptly any (suspected) violation (…)”. Other aspects that can improve the clarity are: offering the code of conduct in multiple languages (see chapter 2 - meat processing industry), offering report forms to make reporting easily or schemes of the whistleblowing system.

2. Clear guidelines and formalities for reporting are important too, because the employee knows where to go with his concerns. If an employee does not know where to discuss his or her concerns within the organisation, he/she will probably put the concerns (unjust) to light via the publicity, which will cause the dismissing of the employee. So including names or departments to which employees can go will make a static policy more applicable. To prevent the fear of dismissal, the policy should state what whistleblowers are allowed to do and what not (e.g. whistleblowing in media) and what protection they can expect when they report. This makes the procedures easier and offer whistleblowers a clear judicial overview.

3. To increase the confidence and anonymity, companies should be obliged to have multiple ways to report misconduct, because the management can pressurise the employees, which retains them to report. But on the other hand, organisations are not fond of anonymity according to the following quote: “DSM wishes to avoid anonymous reports, because anonymity can severely hinder the investigation of the alleged matter.” This indicates that employees are ‘forced’ to abandon their anonymity. Also in a meeting with the Expertgroep Klokkenluiders, Gerrit de Wit stated that anonymity also evokes abuse of it and says something about the culture: including your name should always be possible in a ‘good’ company. By offering multiple ways to report, the anonymity can be guaranteed, for example with a whistleblower hotline. The following scheme will discuss the matter in detail:

149 http://www.philips.com/about/investor/businessprinciples/policies/index.page
150 http://www.patientveiligheid.org/documenten/20040614_dsm_klokkenluidersregeling.pdf
Chapter 4: How to improve upon the whistleblowers policy?

The scheme illustrates that a whistleblower’s hotline will encourage whistleblowers to report, it gives them more ways to report and the chance of dismissal distinguishes by this approach. Multiple ways to report misconduct increases the anonymity and confidence because the change of getting sanctioned is lower. The degree of anonymity should also be explicitly mentioned in the policy.

4. The protection against sanctions is discussed in the past subparagraph. But as we have heard from whistleblower Gerrit de Wit, his organisation was the first one to have a whistleblower policy. This means he was supposed to be protected from dismissal. The government tried to dismiss him on different grounds such as:
   - Dismissal due to illness, de Wit had an advantage that the medical officer was on his side, but in most cases the medical officer persuades to the interests of the organisation he is working for.
   - Dismissal due to incompetence.
   - Dismissal due to general dysfunction.

The ground that finally caused his dismissal was due a ‘disrupted relationship between employer and employee’. Every employee will be dismissed because of this ground if they blow the whistle. If an employee blows the whistle he will report misconduct which is caused by the management, the management will always:
   - Deny misconduct
   - Diminish the misconduct
   - Neutralise the misconduct, not only the causes of misconduct but also the whistleblower if needed.

The employee will consequently continue to blow the whistle, causing a bad relationship. Therefore it is important that the whistleblower is safeguarded against sanctions, not only dismissal but also social psychological sanctions such as discrimination or stalking. These might not be formal, but those are sanctions which can severely harm the whistleblower. By taking the risk of getting ‘sanctioned away’, both current and potential whistleblowers will feel less of a threshold.

5. Many whistleblowers policies have a section concerning the confidant. In order to have an effective policy, confidants should also be effective and useful. In Chapter 1, we described an organisation with few employees, but with a confidant. This means the confidant knows every single employee and the confidant has close connection to the
employee. This makes it useless as it will spread through the organisation very quickly. Therefore confidants should always be (described in policies as) external employees, with no relationship to the management and who are free to decide upon their own procedures.

6. Seeing the fact that we are trying to improve the whistleblowers policy, the policy should be in favour of the employees. A lot of policies, like VION’s policy, still contain lines in which is stated that ultimately, the executive board can make the balance between the interests of the employee and the organisation. This means, that if the report is bad for the company, they can do anything with the whistleblower. Those proviso’s should therefore be eradicated from every policy, since it only counters the aim of a policy.

Subquestion 3: Which influence did the Sarbanes-Oxley act have on Dutch companies?

Senator Paul Sarbanes and Representative Michael Oxley drafted the Sarbanes-Oxley act in the United States of America in 2002. The act was designed to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws. The act was made as a reaction to the occurrence of multiple corporate finance scandals of for example Enron and Global Crossing. The law should restore the public confidence in the reliability of financial reporting and must improve the quality of the audits. This is done by obliging multiple rules for stock market listed companies in the United States. But organisations from abroad with an official establishment in the United States must also adhere to this act, for example A HOLD which has lots of supermarkets in the United States. The act forces those organisations to have firm corporate governance.

The act consists of eleven titles, but only the parts in which whistleblowing is involved will be discussed.

The four provisions

In section 806 of the Act, the protection for employees of publicly traded companies who provide evidence of fraudulent activity is mentioned. The law has four provisions which are protecting whistleblowers:

1. All publicly traded corporations must have a both internal and independent audit committee. A part of the audit committee’s function is to file all internal concerns about

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151 http://www.sox-online.com/basics.html
152 http://www.ey.com/Publication/vwLUAssets/The_Sarbanes-Oxley_Act_at_10_-Enhancing_the_reliability_of_financial_reporting_and_audit_quality/$FILE/JJ0003.pdf
153 http://www.sox-online.com/act_section_806.html
misconduct. This contains procedures to report misconduct and procedures which would protect the confidentiality of employees when they file allegations to the audit committee. In short: every listed company must have a whistleblowing policy.

2. The act allows attorneys under certain conditions to blow the whistle of their clients. By implementing this change attorneys get new ethical standards.

3. The law prohibits every employer nationwide to retaliate whistleblowers for blowing the whistle. The only restriction here is that the whistleblower may only provide truthful information; in case the whistleblower blows the whistle unfairly the employer is allowed to prosecute him for libel and defamation.

4. A violation of any part of the Sarbanes-Oxley Act including the parts in which whistleblowing is mentioned will result in criminal penalties. By not enduring the whistleblowing policy the employer will therefore get prosecuted.

These four provisions give an extraordinary wide legal protection for whistleblowers in publicly traded corporations; it also offers whistleblowers the opportunity to report unjust dismissal to the United States Department of Labour. These four provisions can very well be used as standards in the Netherlands as well.

Payment for whistleblowers

Then there is another aspect of the Sarbanes-Oxley act that is very interesting for whistleblowers, namely that they will receive a reward/payment from the government if they report misconduct in which money is earned by the government (fines or taxes). Assistance and information from a whistleblower is the most powerful weapon law enforcement agencies have. The whistleblower can provide this information and knows who is involved and what the circumstances are, these tips can help the Securities and Exchange Commission to notice fraud in an earlier phase than that they would usually do. Since these tips are so helpful, the SEC is allowed to provide monetary rewards for whistleblowers who can provide high-quality and original information that leads to a commission enforcement action. Because The United States is a liberal country everyone is always encouraged by money. It often happens that possible whistleblowers will get hush money if they do not report the misconduct, this payment will distinguish this matter and makes employees consider what is more worth, a certain amount of money the and outcome of a social misconduct or hush money. The payment does not only encourage American whistleblowers, everyone who can help the Securities and Exchange Commission (SEC) with information about fraud in American Organisations can receive a payment. The payment verifies between 10% - 30% of every fine related to misconduct reported by whistleblowing above one million dollar. This system will also protect the anonymity of the whistleblower because the SEC is not allowed to reveal the

154 http://www.parlementairemonitor.nl/9353000/1/j9vij5epmj1ey0/vi3apmb4gy5
identity of the whistleblower. The law will also give whistleblowers extra legal assistance if they need.

Impact of the act

The Sarbanes-Oxley Act showed both American and European organisations the importance of corporate governance.\textsuperscript{156} This caused the foundation of the Dutch Corporate Governance Commission. The definitive Corporate Governance Code was published on the 9th of December 2003. The message is to show the importance of good internal risk prevention and control. The code is in force for all the stock market listed organisations in the Netherlands.\textsuperscript{157} The Corporate Governance Code also obliges organisations to put their whistleblowing policy on their website, 91\% of the organisations did this. By putting the whistleblowing policy on their website, the policy is accessible for every employee and therefore helps to improve risk management by increasing transparency and control.

Conclusion

With this chapter, we can conclude that the whistleblowing policy is a very effective way to encourage employees to blow the whistle, but only if the format is right. With deep regret, we must state that this is not the case for most companies. Fortunately we can solve this problem by obliging a standard format for the whistleblowers policy by law and also imposing the presence of it for all organisations. We can build on the Sarbanes-Oxley act for Corporate Governance and add the United Kingdom's legal minimums, but things should be added, to actually have whistleblowing-beneficial policy. At least this would result into harsh regulations which protect whistleblowers, give standards which whistleblowers should meet and imposes a whistleblowers policy for all organisations. Additionally, this obliged policy will have a content which needs to meet the guidelines mentioned in subquestion 2. The whistleblower is still not protected enough to speak up without any consequences, and that is the threat for many of them to not report misconduct. Other parts of the Sarbanes-Oxley Act and the Public Interest Disclosure Act are the Turn of Burden Proof and the Reward system. Those two ideas are placed in Dutch context in Chapter 5.

\begin{itemize}
  \item \textsuperscript{156} \url{http://arnop.unimaas.nl/show.cgi?fid=19061}
  \item \textsuperscript{157} Tijdschrift controlling - Drs. A. A. Kröll, financieel specialist Eiffel, divisie Handel & Industrie
\end{itemize}
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Solutions covering the entire issue

Introduction

After explaining the current situation in the first chapters, the first recommendations / solution was explained in chapter 4: outlining the content of the whistleblowers policy. Part of the law proposal is the obligation for all organisations (>50 employees) to have a whistleblowers policy, however the content is free to decide, this makes this particular part of the law proposal useless. But this is not the only improvement which could be made to improve the situation of whistleblowers in the future. One of our other possible solutions is explained in the coming subparagraphs and it looks familiar to the law proposal, however with some differentiating factors. Until the end, it will not be compared with the law proposal. Additionally, some other small solutions will be brought up at the end of this chapter. A special case was closed in December 2014: a judge granted labour protection to a whistleblower. This is a special case, since this is not a law which this is based on, nor other jurisprudence. The question whether this should be part of the solution, will also be discussed in the coming paragraphs.

Possible Solution 1 - The Uniteament

Subquestion 1: What is the general outline of the solution?

The biggest problem any solution for whistleblowing should cover is the complicated part of the current situation: simplification is demanded. In Chapter 4, the legal aspect is covered for internal regulation. In this chapter, the legal aspect will be covered for external procedures. The OM, Rijksinspecties, Toezichthouders, Adviespunt, Expertgroep and the FIOD (see Chapter 1) are just some of the organisations dealing with whistleblowers. One solution is needed instead of dozens of solutions. Asking a random employee on their whistleblowers policy or which way they need to go externally results into an “I don't know”.

This is an equally problematic situation as the lack of legal regulations for them. This simplification needs to be sought in the Uniteament of different organisations and forums of expertise, moreover adding the legal powers which are already investigating companies/orrganisations. This Uniteament of different organisations (read: different possibilities or solutions) ensures an official and clear procedure for all types of whistleblowers in all different stages of whistleblowing. Additionally, this Uniteament should be built on a fundament of legal regulations and labour protection, to enforce the solution and give it the power and legal status it needs to operate and investigate. The word
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‘investigation’ brings up the next issue: the separate advice, investigation and information. Those three terms are currently executed by different organisations. The Unitement should therefore also exist of parties able to advise, to inform and to investigate if needed. Thus the Unitement would eradicate vagueness; impose legal recognition and support for whistleblowers; ensure a safe and clear procedure for all types of whistleblowers; provide legal, financial and psychological backing; and investigation or advice for each individual case by one organisation.

This general outline for a solution hits multiple problems at the same time, because of its purpose:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>= Simplification and unification of solutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solution</td>
<td>= One organisation with multiple sub solutions</td>
</tr>
<tr>
<td>Added value</td>
<td>= Offering one organisation with many integrated (loose) (new and existing) sub solutions [instead of one organisation with one solution]</td>
</tr>
</tbody>
</table>

The Unitement in combination with the solid and obligatory whistleblowing policy as solution for the issue might fulfil the demands of whistleblowers. The second part of the solution will elaborately explained in the coming subparagraphs in order to see if this general outline of a possible solution is actually a plausible solution.

Subquestion 2: What will the solution content wise look like?

The Unitement of solutions and organisations, resulting into one organisation asks for a clear structure and what it will comprise of. One of the aims is to get all the aid, support, investigation and information for whistleblowers into one organisation. Therefore the organisation would comprise of *(for English terms and explanation see chapter 1)*:

1. The Adviespunt Klokkenluiders
2. The Onderzoeksraad Integriteit Overheid
3. Fiscale Inlichtingen en Opsporing Dienst
4. The Nationale Ombudsman
5. Inspecties
6. Toezichthouders Organisaties
7. The Expertgroep Klokkenluiders
8. Labour organisations

All these organisations have expertise, employees and authority on the matter, however their power is never combined to do efficient investigation. Of course, all the institutions listed cannot simply be joined to evolve into one organisation, however some can: Adviespunt Klokkenluiders, Onderzoeksraad Integriteit Overheid and Expertgroep Klokkenluiders. In that way, expertise, advice and research for public sector is covered. The Expertgroup Whistleblowers does emphasise the need for a careful procedure on choosing the people who will work at such organisation (the Unitement), to see if those people have the right working attitude and enough experience on this matter. From the other services which check market sectors, like Inspection Services, the FIOD and Supervisory Organs, their investigatory power and expertise in the field and about the companies is needed to do efficient research. Therefore members or parts of those
previously mentioned institutions can become part of the Unitement, without giving up on the identity of their institution. Labour organisations play an important role in this Unitement, since around 40% of the employees (according to Berenschot) who reported their misconduct externally, reported to their labour/branch organisation. The expertise they possess there plays a large role. A way they could be included is by redirecting all whistleblowers to the Unitement and maybe their experts could even work for the Unitement. Lastly, the National Ombudsman has a position for the public sector which also deals with handling complaints or reports of misconducts. Thus part of the National Ombudsman organisation would be integrated in the solution. This quite complicated form of setting up an Unitement is a direct display of the current situation. The advantage is that the “consumer” (read: whistleblower) will not be bothered with the complicated situation.

On top of the integration of organisations, more expertise needs to be included to provide assisted aid for whistleblowers and organisations dealing with whistleblowers. This means the integration:

- advisors for guidance of the process
- attorneys for judicial support
- psychologists for mental support

This provides the second part of the solution: guidance for whistleblowers. In the research of Berenschot on whistleblowers, it was stated that the whistleblowers have problems with the process and timeline and do not have the expertise to manage the process. Furthermore facts stated that whistleblowers have the need for support, both judicially and mentally.

The organisation itself needs to have legal abilities to do investigation and to force companies and whistleblowers to sit together to come with a solution. To add to that, if the whistleblower was legitimate on the report of misconduct, the whistleblower will get labour protection for a maximum duration of one year, which would depend on the report. However the goal for will always be to solve the issue at hand. The labour protection only serves to provide a safe environment for potential whistleblowers.

The position of the solution in society would be as a Zelfstandig Bestuurs Orgaan (ZBO)(Independent Governmental Organisation) of the Ministry of Social Affairs and Employment, to which the minister of the ministry does not have the rights to influence any aspect of the Unitement. Therefore this structure is only used to get a legal position and funds.

In order to guarantee an objective research, the investigation itself should be completely isolated from all other parts of the Unitement. The importance of it is reiterated by the First Chamber quite often.

The third part of the solution is the recognition of whistleblowers. Not just in society, but also formally and legally. The appreciation for whistleblowers is barely present among employers. The ‘culture’ cannot be changed by law, but the legal appreciation can be covered: as mentioned labour protection is one part, the other part is the financial compensation: the service the Unitement offers should be free of charge, but those are not the only costs for whistleblowers. Whistleblowers often need a private attorney and lose upon income or promotion. The Unitement should be able to compensate whistleblowers for extra costs they make or profits they miss. This can be easily judged, since the routes which whistleblowers take, are already
Chapter 5 - What could be other possible solutions to improve the situation of whistleblowers?

Known by the Adviespunt Klokkenluiders. This compensation is only a small compensation along the labour protection.

In order to make this solution effective, all expertise and investigation should be wisely managed. Therefore the Public Prosecution Service (which is the common investigatory organ of the Netherlands) needs to be in contact on every major whistleblowing case, to optimize investigation even more. The competition between different organisations and public/private sector in this topic for whistleblowers will be gone, therefore marketing costs will dramatically drop. Additionally, the centralized research will decrease the quantity of research, which also results in cost-effective operations. Centralisation on its own, means more, but relatively small, advantages. When all those advantages add up, it results in the fourth part of the solution: cost reduction and effective operations.

A good name for a solution needs to be catchy and cover the content, but most importantly: it should be an objective name. If a name is not objective, it could cause the organisation itself to view (for example whistleblowers) in a different way. Furthermore the other party could be reluctant to view the organisation as valuable. To conclude, the name of the Unitement could be:

- Meld Mistanden
- Klokkenluidersmistanden Nederland
- Raad Integriteit Nederland
- Onderzoeksraad Integriteit Nederland
- Transparantie en Integriteit Nederland
- Integriteit Nederland

Integrating the word “klokkenluider” in the name, makes the solution clear, but also implies that the organisation is solely for whistleblowers, while it is available for organisation, whistleblowers and potential whistleblowers. Thus marketing, trustworthiness and objectiveness needs to find a balance.

Subquestion 3: Could the solution work?

The most important question always concerns the practical achievability: can the solution work? It will be most dependent on the willingness of the different organisations to unite. Stubbornness is vivid in any organisation, but it cannot mean the rejection to unite. If the minister, the Second and First Chamber see the opportunities of this solution, they can more or less force the organisation to join in. Seeing the fact that quite some research have been published the last few years on whistleblowers and their issues, the facts, the problematic situation and the motivation is present to at least discuss it thoroughly. Another reason it might not work is the downside of the cost reduction: the work can be centrally done with fewer people, meaning jobs will be lost. The interference or cooperation with the Public Prosecution Service will not cause any problems (see letter from Procureurs Generaals on the cooperation between an investigatory organisation and the Public Prosecution Service). Noting that the

private sector is desperate for a solution, there is confidence that there will be motivation and willingness among the business sector. This solution has the aim to solve the issues which whistleblowers report upon. This aim is also supported by the businesses, since they do not want media publicity or a negative image.

The VNO-NCW’s (business branch organisation) reaction to this solution would be somewhat mixed. The VNO-NCW’s opinion is quite important, as they represent all companies and thus the most important sector in this issue. Moreover some political parties are attached to the VNO-NCW (like the liberal party VVD). The VNO-NCW wants their own solution to actually take shape, thus they might be reluctant to be in favour of this Uniteement. However the Uniteement also states the importance that the Uniteement should look at the interest of the company and that the whistleblower is not always right. Additionally, a lot of organisations are united, so companies do not have to deal with many organisations. Lastly, companies will be provided knowledge and support on this issue.

Subquestion 4: How does the solution compare to the law proposal?

The law proposal (HvK) equals in the general idea with the solution (Uniteement), however it differs on some fundamental grounds. The HvK aims to solve solely the large, social issues, whereas the Uniteement is also open to all types of cases and the Uniteement will also provide labour protection for those submitting about their own company only. Secondly, the Uniteement has an extra aim: to unite many organisations dealing with whistleblowers. The HvK only integrates the Adviespunt Klokkenluiders. Thus the HvK actually contributes to the problem which the Uniteement tries to eradicate. Thirdly, the HvK does not offer financial compensation for whistleblowers, in contrary to the Uniteement. Additionally, it streamlines investigations throughout the Netherlands among/along with many organisations. The HvK wishes to do individual and independent research. Lastly, the name of the Uniteement is objective and non-implying name. The Uniteement is not focussed on the whistleblower solely, this causes more sympathy among the businesses and organisations which will affected and involved. The disadvantage of the Uniteement compared to the HvK is the complexity. The law of the Uniteement would be much more elaborate and extensive. This is not always beneficial; however the uniting of all the organisations is worth the hassle to create the written law.

The Second and First Chamber’s reaction to the Uniteement are -to a certain extent- predictable, noting the fact that the HvK is similar. The Chambers will probably agree to the Uniteement, since it is ZBO - independent governmental organisation and does not conflict with the constitution. Moreover it enhances transparency and protects the individual. It also simplifies and reduces the organisations on this topic. Lastly it slightly scales down the government and decreases the costs. An objection the Chambers had on the HvK was the unseparated investigation and advice departments. This problem is tackled in this Uniteement.

The entire solution contributes to the process in which the employee and employer relate on a more horizontal level, instead of a strict hierarchical relationship. This enhances transparency, engagement and responsibility. Thus a solution with multiple purposes, ranging from individual advantages to serving the public interest.
Possible Solution 2 - The Public Interest Disclosure Act

Subquestion 5: What is the Public Interest Disclosure Act?

The full content of the public interest act is discussed in chapter 4; in this chapter we will discuss the following aspects:

- Procedural requirements: a progressive scheme what an employee has to do if he wants to report misconduct.
- Turn of burden proof: the employer has to proof that the employee did not have any consequences after reporting misconduct.

Subquestion 6: Could the Act work in the Netherlands?

The public interest disclosure act is one of the world’s best legal protections for whistleblowers, in the Netherlands we can learn a lot from it, because we only have limited protection for whistleblowers. (the ‘Huis voor Klokkenluiders’). In this paragraph we will discuss how we can implement the act in the Netherlands.

Procedural requirements

By implementing procedural requirements of the whistleblowers policy, we help both parties in the whistleblowing procedure: the whistleblower and the company. As we have seen in chapter 4 the procedural requirements help a whistleblower to find his way with his concerns. By following the procedural requirements the whistleblower will gain legal protection if he reported his concerns internally first but the company did not take appropriate measurements he therefore blows the whistle and is therefore legally right. But the procedural requirements in the United Kingdom are complicated and therefore it is necessary that if we implement procedural requirements in the Netherlands, the procedure should be clear for every employee. But by implementing this system, the threshold for employees to blow the whistle is still too high. The causes why employees are afraid are the consequences they might be faced. To take those consequences away, organisations should encourage whistleblowers more, instead of threatening them.

But the company is protected by the procedural requirements as well because the employee is forced to use the internal report system first before reporting it externally (otherwise he will not gain legal protection and will have a weak position in court). It will secure the company from bad press and is therefore a way for organisations to change their approach towards whistleblowers because they do not have to be afraid of the infringement of their good name and reputation.

Turn of Burden in the Netherlands
Chapter 5 - What could be other possible solutions to improve the situation of whistleblowers?

The procedural requirements make it difficult for employees to report misconduct, even though it prevents the escalation of misconduct, it does not guarantee an easy environment for the whistleblower to live in. To make this easier, we wonder if we should implement the Turn of Burden Proof in the Netherlands. By doing this, the whistleblower does not have the threat that he has to fight against his dismissal, but the employer has to come up with grounds to dismiss the employee. By implementing this, we can build on the current Dutch laws concerning dismissal. In the current system the judge reviews if the employer has serious grounds for dismissal if he does not have these grounds the judge will claim a compensation for the employee.

The Turn of Burden Proof is a huge change in the current system, because the employee can say that he found consequences of blowing the whistle and the employer has to investigate that this is no the matter, which is tougher for the employer then it now is for the employee. Dismissal due to whistleblowing is a special case, because of the blacklisting of employees who blow the whistle. Due the blacklisting, the employee cannot longer work in this field of interest anymore (the research of Berenschot, mentioned in Chapter 1 states that blacklisting prevails). Blacklisting is not uncommon, for example at NHS Edwin Jesudason was blacklisted because of whistleblowing and lost his job as a highly regarded surgeon and did not get another job at another organisation or at the NHS. In this case whistleblowing does have major consequences and therefore the Turn of Burden Proof can be useful.

The only drawback by implementing the Turn of Burden Proof, is that the whistleblower can become lazy and starts reporting recklessly to get dismissed and to get a compensation, since he does not have to proof anything and waits for the employer to come up with evidence that he is dismissed for another reason. But this drawback is already taken away by ‘het Huis voor Klokkenluiders’, because it forces employees to:

- handle with good will
- handle with integrity
- handle proper

By implementing this in ‘het Huis voor Klokkenluiders’ the employee is forced to obey to these conditions or otherwise he will not get legal protection and therefore the turn of burden will not be used in this case. Thus the combination between the Huis voor Klokkenluiders (concerning the three demands for whistleblowers) and the Turn of Burden Proof can be effective.

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161 http://sharmilachowdhury.com/blacklisting-of-whistleblowers/
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Possible Solution 3 - The American solution

Subquestion 7: What is the American solution?

The major part of whistleblowing laws in the United States is the Sarbanes-Oxley act, which is discussed in chapter 4. In this sub chapter, we will discuss the following aspects of Sarbanes-Oxley act:

- Payment/reward for whistleblowers
- The four provisions:
  1. All publicly traded corporations must have a both internal and independent audit committee.
  2. The act allows attorneys under certain conditions to blow the whistle on their clients.
  3. The law prohibits every employer nationwide to retaliate whistleblowers for blowing the whistle.
  4. A violation of any part of the Sarbanes-Oxley Act including the parts in which whistleblowing is mentioned will result in criminal penalties.

Subquestion 8: Could the American style work in the Netherlands?

The AFM and the SEC

First of all, we would like to say that the ‘Autoriteit Financiële Markten’ (Authority Financial Markets) has the same task as the SEC in the United States, but the AFM is not allowed to give rewards to whistleblowers in the present. This matter is not discussed in ‘Het Huis voor Klokkenluiders’. But the AFM is very positive about this new law, because even though the AFM investigates proactively, the authority often receives tips from third parties. Therefore she is positive about ‘Het Huis voor Klokkenluiders’ because it will encourage everyone to report misconduct and protect and assist whistleblowers, so also the AFM will receive more tips.¹⁶² By implementing a reward for whistleblowers, the authorities will presumably get a lot more tips about possible fraud. Our only problem is that the Sarbanes-Oxley Act only focusses on the financial markets and not on other fields of interest, such as health care, state security or food safety. We think that it is necessary to implement the reward program on other fields of interest as well (if it were to be implemented). In order to lose the whistleblowers who are only looking for the money, demands on the report should be set: the report should be high-quality; should deal with social issue and offer a financial benefit to the state (fines or taxes).

¹⁶² [http://www.afm.nl/~/media/Files/publicatie/2013/brief-reactie-klokkenluidersverzoek.ashx](http://www.afm.nl/~/media/Files/publicatie/2013/brief-reactie-klokkenluidersverzoek.ashx)
Current Rewards in the Netherlands

It is not very likely that the government rewards people with money; in some major crime cases the tip to the culprit notches the citizens or the company ‘Tip en Toon regeling/geld. But this is only offered in cases in which murder, abuse or heists play a role. This regulation exists since 1963 but is not very successful. For murder the state prosecutor offers 15000 euros, which is often less money than the culprit will offer as hush money. The legal minimum for a reward is 5000 euro and there is no maximum. The highest reward was 50000 euros and has never been paid. Compared to other countries this reward is incredibly low. That might be the reason why it is not working right now, and it will not work with whistleblowing too. To make this system work, the rewards have to be raised to level which exceeds the hush money and then it could be implement this system in The Netherlands.

Advantages of rewarding whistleblowers

Despite the fact that whistleblowers can come in severe situations with loads of consequences, they do not get any advantage of their good deeds. For example we take Ad Bos, the whistleblower of fraud in the construction sector. Because of his reports the government gained 100 million euros and Ad Bos personally lost friends family and his house and only got into worst situations. In The United States Bos would get 10 to 30 million euros, but unfortunately he lives in The Netherlands and only lost instead of gained. Whistleblowers may not end up like this, because it will discourage whistleblowers in the future. Therefore the whistleblower should at least be compensated for reporting, or even better: become a reward. Professor Mr. Pieter van Vollenhoven is interested in this system and finds it worth to take a closer look at the System in the United States.

Whistleblowers nowadays only handle due their integrity; they do not want to commit misconduct and therefore digs one's hills in. But by implementing rewards, employees with financial interest will start whistleblowing too, and that makes the amount of reports of misconduct higher.

Drawbacks of implementing rewarding whistleblowers

The fact that money can be an incentive for reporting misconduct, it will also cause abuse. And the most critical part of the reward system is that it is implemented the other way around. We are now encouraging whistleblowers because we reward them but we should actually oblige them to report and prosecute them if they do not. This requires some psychological explanation. According to Laetitia Mulder there is a difference in thought between rewarding and punishing. A reward suggests that it is not necessary to report but desirable. A punishment suggests that it is unacceptable to not report misconduct. Therefore we should not reward reporters of

164 http://www.npo.nl/eenvandaag/16-06-2011/AVRO_1408947
misconduct but punish the ones who do not.\textsuperscript{165} However this is practically unachievable and causes a negative labour culture and reluctant relationship between employees and employers.

The four provisions

The Sarbanes-Oxley act includes four provisions, relevant for whistleblowers, which are mentioned earlier.

First of all, the internal and independent audit committee. This obliges companies to have a committee which files and deals with all the concerns raised by employees. This is specific staff-section so the management is not involved, and therefore the confidentiality of the employee is guaranteed. Implementing this in The Netherlands is wise because it will encourage employees even more to report misconduct. The Staff is not allowed to put sanctions on an employee and does not have to do anything concerning making profit: the committee is actually an enlargement of the responsibilities of the confident concerning whistleblowing.

Secondly the act allows attorneys to blow the whistle under certain conditions. This is alien to several parts of the current code of practise of attorneys, namely:

- Rule 1: the attorney must always handle in such a way that the trust in the advocacy or his profession is not damaged. By allowing attorneys to blow the whistle with information given by clients may damage the trust in advocacy and there this is a very bad situation.
- Rule 5: the attorney must always handle in interest of the client, not his own interest or social interest. By implementing this, the attorney is not any longer handling in the interest of the clients.
- Rule 6: the attorney is obliged to confidentiality. He must ignore issues that take his interest such as fraud.\textsuperscript{166}

We suggest making an exception for cases in which the social interest is threatened, because the social interest always outweighs the interest of the client to our opinion.

Thirdly every employer nationwide is prohibited to retaliate whistleblowers. This makes it unable to dismiss the employee or inflict the employee in any other way. This is a good thing because it protects whistleblowers on a critical point; this is partly introduced in 'Het Huis voor Klokkenluiders'. (Picture shows the actual thought whistleblowers have, after blowing the whistle)

\textsuperscript{165} http://www.accountant.nl/Accountant/Opinie/Meningen/Beloon+klokkenluiders+niet+straf+de+zwijger.s.aspx
\textsuperscript{166} http://www.tuchtrechtspraak.nl/GEDRAGSREGELS_VOOR_ADVOCATEN.htm

WHISTLEBLOWERPWS@GMAIL.COM
Fourthly violation of any part of the Sarbanes-Oxley Act including the parts in which whistleblowing is mentioned will result in criminal penalties. This is very important to implement because then the protection of the whistleblower is not any longer an advice but an obligation. It will force employers to treat whistleblowers right because of the threat of getting fined.

**Conclusion**

In this chapter, more solutions are discussed along with a possible solution of chapter 4. To summarise:

1. The first solution dealt with the *Unitement* in which advice, investigation, support, guidance and registration are centrally but separately organised for all whistleblowers of the Netherlands.
2. The second possible solution deals with the *Turn of Burden Proof* which makes it easier to prove that they found consequences of whistleblowing.
3. Next to that the, *Procedural Requirements* prevent the escalation of concerns at an early stage and makes it clear for employees what to do and to prevent image of company.
4. The fourth possible solution deals with the *Four Provisions*:
   1. Independent and Internal Audit Committee for Integrity. Positive solution for NL.
   2. Attorneys can blow the whistle on their clients. Negative solution for NL, due to current legislature.
   3. Organisations are forbidden to retaliate their employees. Positive solution for NL.
   4. Criminal penalties for anyone violating rights whistleblowers have. Positive solution for NL.
5. The last possible solution is *The Reward System*, it can encourage people more to raise concerns and blow the whistle, but it will be better to oblige them to do it and prosecute them if they do not according to some. The reward system might be a too liberal solution for the Netherlands.

Whether or the possible solutions can take shape in the Netherlands to improve the position of whistleblowers will be discussed in the Conclusion (see next Chapter).
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Conclusion
Conclusion

Ad Bos, Fred Spijkers and Pieter van Vollenhoven all strongly agree to the same observation: they would not advise anyone to become a whistleblower, but they do desire the presence of whistleblowers for the greater good. This precise dilemma is the key to this research report and to the general problem-analysis which consequently leads to the thesis question. The greater good concerns us and our society: whistleblowing is not solely meant for personal advantages, but primarily for serving society and to do what is just and honest.

Even though the government tries to stimulate acceptance and support for whistleblowers, success is still not the result. This research paper clearly shows what kind of problems still take place in this issue. After first identifying the struggles which whistleblowers face, different solutions are explained. However in order to solve the thesis question - how to improve the position of whistleblowers - we need to look at the possible combination and effectiveness of the solutions in the Dutch society. On top of that the labour mentality and employers’ retaliation need to be changed to view transparency more as a vital element which should be embraced by both employees and employers. Whistleblowing can play a part in this.

The problems which need to be covered are: lack of (labour-) protection, overflow of external organisations, lack of valid, protective and objective whistleblowers policies, lack of reward/incentive/compensation, the lack of support and lack of anonymity. The above mentioned problems cannot be solved in one solution and therefore a joint effort should be made.

One of the biggest critiques against the Adviespunt Klokkenluiders is the lack of investigation. One of the biggest critiques against the current law is the lack of labour protection. One of the biggest critiques against the common policies in organisations is their ability to decide their own content and to put business interest in front.

Sponsored with knowledge by field-experts such as Houthoff Buruma and Expertgroep Klokkenluiders, this paper does not only consist of theoretical research but also includes innovative solutions and practical cultural knowledge. More the Meat Processing Industry shows us that language, power and position differences between employees and employers can result into fearful employees who are not willing to start whistleblowing. This reinforces the need for both national legislature and a better whistleblowers policy.

Before giving our final recommendation to improve the position of whistleblowers, we quickly come back to the Huis voor Klokkenluiders. Elements in that solution are very valuable and very innovative (solution-based investigation, pre-investigation and protection). With the expectation of it getting accepted, the Huis voor Klokkenluiders will definitely be beneficial. Though, some elements also need improvement for it to be really effective.

As a final recommendation to answer the thesis question, we will offer a package of regulations which overlap but do not interfere. One law could include those separate solutions and be presented as a final solution to provide a wide range function. The specific content of the
separate solutions are explained in Chapters 4 and 5, respectively the whistleblowers policy and the Unitement & different forms of labour protection.

The final solution contains the Unitement as fundament, which provides support, labour protection, financial support and advice. On top of that, the American Reward System will be adopted to compensate whistleblowers for hush money and to give an incentive. Since whistleblowers should handle justly, with good will and proper, this would eradicate whistleblowers opting for money. The reward should not be as high as in America, since the Netherlands is not as liberal. On top of that, the Turn of Burden Proof law of Great Britain to decrease the possibility for employers to simply retaliate their employees. Also the whistleblowers policy needs attention. The whistleblowers policy will become obliged for all organisations, in which it should meet the requirements (see Chapter 4), such as: no proviso’s, clear guidelines and no organisation related confidant. Moreover, the Procedural Requirements of the Public Interest Disclosure Act should be introduced to guide whistleblowers to use the right path and to protect both the image of the companies as the whistleblowers themselves. Those guidelines indicate how a whistleblower should report and when the whistleblower can rely on protection and support. Also the rights and duties are stated in those Procedural Requirements. Lastly, an element of the Four Provisions (Sarbanes Oxley Act) will be included: there should be an Internal and Independent Audit Committee for Integrity (only for NVs/PLCs), to extend the confidant and to provide real support for whistleblowers. This Committee may not be influenced or directed by the management in any form or way.

To conclude this cross curricular project and answer the thesis question, a wide range of integrated solutions can offer as a mean to improve the position of whistleblowers in the future: The Unitement, Procedural Requirements of the Public Interest Disclosure Act, standards for Whistleblowing Policies, part of the American Reward System and one element of the Four Provisions of the Sarbanes Oxley Act. The culture is already changing into the right direction and would be accelerated by those solutions. Moreover the protection and wide support and recognition would make potential whistleblowers more willing to actually state their report of misconduct. Besides this final conclusion, the importance of internal reporting and internal whistleblowing needs to be stresses in order to encourage horizontal relationships and a friendly working atmosphere. All in all, the personal feeling which remains is the wish that whistleblowers throughout the world will be viewed as heroes instead of villains.
Afterword

Introduction

Concluding our research, a general research conclusion is given in the Conclusion and the way this was accomplished is explained in the coming paragraphs (Afterword). An individual reflection is included for each student at the end.

During the brainstorming session for our Cross Curricular Project, we did some research on the issue of whistleblowers and concluded there was no solution present. This gave us the ultimate opportunity to actually have an useful CCP and come up with creative and new solutions. Unfortunately we were faced with a back down, since the government simultaneously came up with their own solution. This made the research quite theoretical, but on the other hand also provided us with a large amount of researches and factual information to back up our CCP. A positive side of the law proposal (the solution of the government) was the incompleteness (we could still add some valid points) and the fact it is not accepted by the First Chamber, not making our solution redundant.

When we started contacting all the organisations, we noticed a certain tension and reluctance to give us any information. The government did not want to help us to find additional information: "we cannot handle all requests of students". We shifted towards companies, which consequently replied: "we do not want to handle your request". Meat processing industry replied: "we cannot allow you into the company, since we have been in bad weather recently". Also Vertrouwenspersonen (confidants) did not answer and most organisations never even replied. Whistleblowing remains an issue which companies view as hostile and not in the interest of their business.

An organisation which was more than willing to have us was Houthoff Buruma. A judicial/advice/support company, which also published a report on whistleblowing. When everything was set up and a meeting was planned, they cancelled appointments multiple times and ignoring our emails. At the end, we got a short written answer to our questions, which can be viewed in the attachments.

Since Houthoff Buruma was not very helpful, we contacted the Expertgroep Klokkenluiders, which we arranged a meeting with. This meeting took place on Tuesday the 3rd of February 2015. Both Gerrit de Wit and Peter Kools were very open during the meeting and provided us with many answers to our question (see attachment). This meeting has been blended into every chapter to back it up.

Another word of thanks needs to go to our supervisors. Especially our subject supervisor was helpful, since she contacted valuable Human Resources Management-employees. Also Frames and LUMC have been helpful for the publishing and printing of the booklets.
Individual Reflection Sjors Melman

First of all, I am glad we have finished the CCP in time without great stress. We have been planning the CCP from September onwards, so we both worked around 40 hours per student when we handed in our Concept version. Unfortunately we only got back the Concept version two weeks before the final deadline. The remarks were positive so that resulted in few problems.

Secondly, reflection on my own work. I am satisfied with the way I approached and worked on the CCP. I have been mailing a lot of companies and contacted many people, checked all the parts and did a lot of research, to back up all the statements and ideas. Especially structuring, processing and checking language took up quite some time. When we had a meeting with the Expertgroep, I noticed that I understood all aspects and could place it in context, which affirmed the research I did. The level of English and whistleblowing jargon is as it should be and the entire structure makes sure it is readable and understandable for both experts and people who have not heard of the word ‘whistleblower’ before. The part which I could have improved on is cooperation with Philippe, to streamline the CCP more.

This brings me to the third item: cooperation. Coming up with a subject, thesis question and structure was not very difficult. We also had frequent contact with each other, but the actual investigation and chapter writing was done individually. Unfortunately, Philippe stopped working on the CCP for a couple of weeks during the winter, which resulted in me running ahead of schedule and him running behind, this causes a bottleneck in February. The level of knowledge is relatively equal among the both of us. However the level of English did not, due to difference in education. So some more spelling checks needed to be done, but the overall grammar and syntax was clear.

This research paper did help me a lot to get to know the business culture a bit better, to get way more knowledge and understanding on this topic and to definitely acquire more writing/researching skills.

Consequently, the level of the CCP as a whole matched my expectations. The structure, layout, knowledge and understanding turned out very positive. The level of innovative ideas could maybe have been even higher, but looking at other countries’ legislature also improves the range and completeness of a CCP. The level of English matches the CCP and thus the overall reflection of the level of the CCP is positive and satisfactory.

The result we gave in the conclusion could have been more innovative, as mentioned. Unfortunately it turned out to be a different solution/advice/conclusion than expected due to the law proposal. This did greatly influence our research paper. The conclusion of this CCP is a very valuable conclusion since it covers all aspects and perspectives of the problem and is useful at the same time. Also a look at other countries could inspire our own nation.

The supervision was entirely new to me. It helps to get a fresh look at your research and of course adds to the number of contacts and opportunity. Together with our Supervisor, we contemplated quite a lot on how to tackle and structure this immense problem and subject. Supervision also increases the willingness of other companies and organisations to help us, since
they realise it is not just a simple project. We have had several meetings to check up upon our progress and this also made sure we were not heading in the complete wrong direction. Both the comments of the English Supervisor and the comments on the Concept version came in a bit late. This of course does add to the degree of independence.

All in all I am satisfied with the overall quality of the research paper and with the answer to the thesis question. Moreover my planning was clear and carefully spread of the months. The immense amount of mailing with different organisations made it a continuous process. Working together with Philippe was fun and very valuable due to his knowledge on the meat processing industry.

**Individual Reflection Philippe Jochems**

First of all I am satisfied with the result of our Cross Curricular Project, despite the fact that it is very hard to find information about whistleblowers due the consequences it could have for them to speak up, and the confidentiality of attorneys, we managed to make a complete view on how the situation of whistleblowers is right now and solutions to improve their position.

With regard to self-reflection, I am proud that I managed to write my CCP in English even though I was not obliged to, this expresses my international ambitions. For me this was even an extra motivation to make the most of it. Sometimes it was really hard to understand the American law or the British law but after a while I got used to it and that gives a lot of self-esteem. It was also hard to find the right people to speak with because most organisations are not that fond of attention around this subject, sometimes I had mailing conversations for day and it did not help us at all. During the winter period I really got in trouble with different subject and the CCP had to suffer that but fortunately I managed to get the 80 hours in time.

It was pleasant to do my CCP with Sjors, within an hour we found a topic and were both very interested in working on it. We could both put our different interests in the project and that resulted in good cooperation and we did not have any effort with dividing the subjects. We worked on the chapters individually except for chapter 5 but we frequently had contact with each other to discuss the progress or make an appointment for an interview. Sjors sometimes putted a lot of pressure on me because I was running behind, sometimes that was really annoying but it encouraged me to work harder. Our knowledge about the subject was equal but the level of English was pretty different, fortunately Sjors wanted to do some more spelling checks and helped me when I needed it, I am very thankful for that.

I have learned a lot about whistleblowing, I thought that it was not such a big deal but after the CCP I can say that my respect for them has grown enormously especially after the interview with Gerrit de Wit and Peter Kools. Whistleblowers are in a very bad legal position and that has to be changed to my opinion. I also noticed that the culture in organisations is ethically bad, profit is the only thing they strive for no matter what the consequences are, and I personally hope that I will not work for such a company later. My level of English skyrocketed during this CCP, my vocabulary grew enormously and I can profit from it during my Bachelor and Master Business Administration.
I think that our CCP is above the level to be expected from a VWO student, because we used a lot of highly regarded sources such as articles from universities and projects of renowned companies.

To my opinion we gave a very clear and detailed view on the topic and some solutions which are possible. The lay-out is clear and the schemes visualise the company’s structures which makes it easy to understand. The solution for this problem turned out differently than we thought, the conclusion could have been more innovative but overall we are glad with what we achieved.

The supervision was different from what I am used to, the supervisor is just checking what you are doing and is helping to come up with questions but you have to rely on yourself and your partner, which is essential when you go to university.

I divided my time in the wrong way, started off putting very little effort in it and in the end I had to hurry to manage to finish the project in time. The CCP did not have the most priority during the winter and you can see that in the time registration form, I was busy with my Dutch oral exams and that took a lot more time than I thought.

**General Reflection**

In general, we are satisfied with the result, since we listed even more solutions and explained more researches than planned. Moreover we got some interesting pieces of material which serve as proof for the complicated and strange culture and regulations around and for whistleblowers. Concluding, we believe we met the level which a CCP needs to have, since both practical, theoretical elements are included and we did both field and desk research on the topic. Even though the majority is theoretical research, it is not a copy of other researches or solely a summary of events. Therefore we can conclude that enough knowledge and understanding of the topic is used to provide a solid and valid advice in the Conclusion.
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Attachment 2 ~ Bibliography

(Scientific) Publications
(Title, Organisation, Date)
- Privacy: Tips & Tricks voor de Ondernemingspraktijk, Houthoff Buruma, 2013
- Bedrijfsjuristen Monitor 2012, Houthoff Buruma, 2012
- Veilig Misstanden Melden op het Werk, Berenschot, 2014
- Zwartboek Klokkenluiders, Expertgroep Klokkenluiders, 2012
- Evaluatie Zelfregulering Klokkenluiders procedures, ECORYS, 2006
- Aard en Omvang Integriteitsschendingen binnen de Nederlandse Overheid, BIOS, 2014
- Initiatievoorstel Huis voor Klokkenluiders 33.258, Van Raak, Kamers der Staten Generaal, 2015
- Supplemental Research Brief 2009 National Business Ethics Survey; Reporting: Who’s Telling You What You Need To Know, Who Isn’t, and What You Can Do About It., Ethics Resource Center, 2010
- What Makes a Good Whistleblowing Policy and Why it is Important, Freshfields Bruckhaus Deringer, 2013
- Policy Guide & Template Whistleblowing, People In Aid: Promoting Good Practise, 2002 and 2008
- The Sarbanes-Oxley Act at 10: Enhancing the reliability of financial reporting and audit quality, Ernst and Young, 2012
- Kenmerken van Klokkenluidersregelingen, De Vries; Bollen and Hassink, 2007

Magazine and Newspaper Articles
(Title, Author, Place of Publication, Date)
- Klokkenluiders krijgen eigen huis, Merijn Rengers, Volkskrant, 12th of December 2014
- Vuile Was, Lex van Almelo, De Accountant, May 2008
- Vleesverwerker VION in Boxtel sluit vestigingen, geen banen verloren in NL, Youssef Zerrouk, Omroep Brabant, 10th of July 2014
- Klokkenluider Vleesfraude VION spreekt: ’We hebben dit onder bedreiging moeten doen’, Hessel Rippe, Omroep Brabant, 6th of December 2013
- 15.000 € Boete voor VION, Edwin Rensen, Vlees Magazine, 15th of April 2014
- NVWA richt vizier op Vleesfraude: meer controles, Bert van Doorn, Omroep Brabant, 10th of June 2014
- Toezicht op Vleesindustrie volledig in handen van Overheid, Carlijn Vis, NRC Handelsblad, 10th of June 2014
- De Impact van de Sarbanes Oxley Wet, Tijdschrift Controlling, 2004

Books
(Title, Author, Place of Publication, Date)
- Other People’s Money: A study in the Social Psychology of Embezzlement, Donald R. Cressey, Montclair: Patterson Smith, 1973
- UITGEBEEND, Marcel van Silfhout, Oostenwind, 2014
Documentaries

*(Title, Broadcast, Channel, Date)*
- De Dood van een Klokkenluider, Zembla, NPO, 4th of September 2012
- Klokkenluiders in de kou, Zembla, NPO, 17th of June 2008
- Sjoemelen met Vlees, Zembla, NPO, 5th of September 2013
- Imtech en Ordina Klokkenluiders, Nieuwsuur, NPO, 4th of February 2015

Websites

*All websites are documented by the use of footnotes. Date of usage can be found in time registration form. The footnote itself is placed at the paragraph it is linked to. Commonly used websites are listed below. For specific hyperlink, see footnotes.*
- http://www.whistleblowers.org/
- http://www.adviespuntklokkenluiders.nl/
- http://expertgroepklokkenluiders.nl/
- https://www.publeaks.nl/
- http://commissiecorporategovernance.nl/
- http://wetten.overheid.nl/
- http://www.integriteitoverheid.nl/
- http://euobserver.com/
- http://www.fhv.nl/
- http://www.tweedekamer.nl/
- http://www.eerstekamer.nl/
- http://www.rijksoverheid.nl/
- http://www.vionfoodgroup.com/
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### Totaal Beoordeling PWS

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Expertgroep Klokkenluiders
Geachte heren studenten,

Uw verzoek is eerder gelezen, maar nu pas behandeld. De agenda was vol en ons bereiken momenteel meerdere verzoeken van studenten in het kader van onder meer een PWS. Onder voorbehoud van de hoeveelheid tijd die een en ander vergt ben ik bereid op uw verzoek in te gaan. Openbare vergaderingen kennen we echter niet. Alleen besloten bijeenkomsten. Mogelijk dat een integrale presentatie over de Expertgroep een optie voor jullie werkstuk is. Daarnaast kan ik verwijzen naar publicaties onzerzijds of naar onze website. Uiteraard willen we ook deelgenoot worden van uw resultaten.

Als U nog interesse hebt mag Uw reactie teruggestuurd worden naar ons secretariaat (zie bovenstaand in cc).

Ik zie het wel tegemoet.

M.vr.gr.

Gerrit E.L.M. de Wit.

bestuursvoorzitter & directeur Expertgroep.

Openbaar Ministerie - Human Resources Management

De klokkenluidersregeling blijkt geen issue te zijn voor het OM, dus ook geen deskundigen of extra kennis/materie op dat vlak. Klokkenluidersregeling zelf ligt uiteraard op arbeidsrechtelijk vlak. Het is pas interessant voor OM zodra er strafrechtelijke misstanden worden aangetoond, maar dat staat los van de regeling zelf. De aanmerkingen van het OM m.b.t. het wetsvoorstel betrof ook slechts de praktische uitvoerbaarheid van het Huis voor Klokkenhouders: is het mogelijk dat Huis voor Klokkenluiders onafhankelijk van het OM een onderzoek start zodra het een strafrechtelijke misstand betreft. Ja aldus OM is mogelijk bv. via een afstemmingsprotocol zoals ook met meerdere instanties (bv. Nationale Ombudsman) aan de orde is.

Als HRM-er zelf ook geen specifieke kennis/ervaring m.b.t. klokkenluidersregeling. Is ook doorgaans geregeld via beleid/regeling vertrouwenspersonen.

Ingrid van Rooijen
Houthoff Buruma

Beste Philippe en Sjors,

Wolter en ik zijn morgen onverwacht verhinderd. Graag plannen wij een nieuwe afspraak. Bellen jullie mij even als jullie in de gelegenheid zijn?

Vriendelijke groet,
Franciska Voorberg

HOUTHOFF BURUMA
Franciska Voorberg (F.E.)
advocaat
f.voorberg@houthoff.com
www.houthoff.com

De mail betreft de eerste afspraak, de tweede afspraak is telefonisch afgezegd.

~

Beste Philippe en Sjors,
Mijn college Franciska Voorberg is onze expert op het gebied van de privacy aspecten van de klokkenluider regeling.

Zij zal jullie nog een paar tips zenden.

Wij ontvangen jullie graag op dinsdag 11 november om 10 uur op ons kantoor.

We zullen ook een van onze collega’s van arbeidsrecht vragen zodat jullie ook vragen kunnen stellen over de arbeidsrechtelijke positie van de klokkenluider (kan hij of zij ontslagen worden? Kan de klokkenluider een beloning krijgen? Etc.).

We trekken er anderhalf uur voor uit (tot 11.30 uur). Voor onze voorbereiding (en die van jullie natuurlijk ook) is het nuttig als we bijv. vrijdag 7 november jullie vragen per e-mail krijgen Lukt dat?

Met vriendelijke groet,

Wolter Wefers Bettink
HOUTHOFF BURUMA
advocaat | partner

~
Beste Philippe en Sjors,

Dank voor jullie bericht en mooi dat jullie belangstelling hebben voor een lastig onderwerp als de klokkenluider regeling.
Is dit voor jullie profielwerkstuk?
Wij praten graag een keer met jullie over de privacy en de arbeidsrechtelijke aspecten van de klokkenluider.
Als jullie willen kan dat hier op kantoor (dat ligt aan het station Amsterdam Zuid).

Laat maar even weten wat de bedoeling is.

Met vriendelijke groet,

Wolter Wefers Bettink

Wolter Wefers Bettink
HOUTHOFF BURUMA
Wolter Wefers Bettink (H.W.)
advocaat | partner

Openbaar Ministerie - Informatievoorziening

Uw kenmerk is E3163832

Geachte heer Melman,

Hieronder volgt een reactie op uw e-mail, waarin u aangeeft dat u een profielwerkstuk over klokkenluiders maakt. U geeft aan dat u op de website om.nl geen informatie over de rol van OM in dit soort zaken heeft kunnen vinden. U vraagt wat de rol van OM hierin is.

Vanwege het grote aantal verzoeken dat het ministerie van Veiligheid en Justitie en OM ontvangen van middelbare scholieren voor de hulp bij opdrachten, werkstukken en projecten kunnen zij uw vraag niet inhoudelijk behandelen.

Informatie voor uw profielwerkstuk kunt u op veel manieren vinden. Kijkt u eens op de website van de Rijksoverheid. Hier staat mogelijk inhoudelijke informatie die u kunt gebruiken voor uw opdracht. Hieronder vindt u de link.
http://www.rijksoverheid.nl

U kunt tevens terecht bij de openbare bibliotheek, de bibliotheek van uw opleiding, een wetenschappelijke bibliotheek of de Koninklijke bibliotheek. De openbare bibliotheek heeft een eigen website die u via onderstaande link kunt vinden.
http://www.bibliotheek.nl/

Ook de Koninklijke bibliotheek heeft een eigen website, de link naar deze website vindt u hieronder.
http://www.kb.nl/
Ook de websites van universiteiten en hogescholen bieden informatie. Tot slot kunt u terecht op de website van Kennisnet en de website HBO Kennisbank. Onderstaand vindt u de link naar Kennisnet.
http://www.kennisnet.nl/cpb/vo/werkstukken/
Via onderstaande link vindt u de website HBO Kennisbank.
http://www.hbo-kennisbank.nl/
Wij vertrouwen erop u hiermee voldoende te hebben geïnformeerd en wensen u veel succes met uw profielwerkstuk, meneer Melman.

Met vriendelijke groet,

Gina de Lange
Publieksvoorlichter Informatie Rijksoverheid

Overig
Alle mails die aangeven geen gehoor te willen geven aan onze verzoeken tot contact zijn niet integraal opgenomen. O.a. deze organisaties:
- Rijksoverheid wetgeving
- Vertrouwenspersoon
- Van der Meij
- Ernst and Young
- Van der Zwet Accountants
- PricewaterhouseCoopers
1. Welke cultuur heerst er in het bedrijfsleven rondom de klokkenluiders?

_Veel ondernemingen hebben de afgelopen jaren een regeling voor de melding van misstanden (MM regeling) ingevoerd. Ook scholen en andere instellingen doen dat tegenwoordig. Ik heb de indruk dat het algemeen aanvaard is dat een onderneming of instelling een MM regeling moet hebben. Zie ook antwoord op vraag 11_ 

2. Is het mogelijk om de Public Interest Disclosure Act (1998 - UK [omkering bewijslast]) te implementeren in Nederland?

_De omkering van de bewijslast ziet op de situatie dat de werknemer wordt ontslagen omdat hij een bepaalde melding heeft gedaan. In dat geval wordt aangenomen (behoudens door de werkgever te leveren tegenbewijs) dat sprake is van kennelijk onredelijk ontslag._ 

_In Nederland is sprake van kennelijk onredelijk ontslag als de arbeidsovereenkomst wordt opgezegd zonder opgave van reden of op grond van een voorgewende of valse reden. Oordeelt de rechter dat sprake is van kennelijk onredelijk ontslag dan leidt dat niet tot herstel van de dienstbetrekking, maar tot schadevergoeding. Omkering van de bewijslast is een ingrijpende maatregel, omdat de ene partij alleen hoeft te stellen dat sprake is van een bepaalde omstandigheid en de andere partij dan moet bewijzen dat dat niet zo is, wat altijd veel moeilijker is. Voor omkering van de bewijslast in het kader van het arbeidsrecht is in Nederland dan ook alleen in bijzondere situaties aanleiding, bijvoorbeeld als het gaat om een fundamenteel principe (handelen in strijd met het discriminatieverbod) of in het kader van gezondheidsschade voor de werknemer als gevolg van zijn werkzaamheden, waar het voor de werknemer erg moeilijk is om aan te tonen dat de schade is veroorzaakt door het werk, terwijl de gevolgen voor hem zeer ernstig zijn. Misstanden in een onderneming of instelling kunnen in hun algemeenheid niet op een lijn worden gesteld met dergelijke bijzondere gevallen._ 


_Het is mij niet bekend dat dit voor komt._

4. Kan de VPI (Vertrouwenspersoon) gemakkelijk beïnvloed worden door het management?
Dat zou niet mogelijk moeten zijn. Een VPI Statuut is een goed middel om de positie van de VPI te waarborgen.

5. In hoeverre is een overkoepelend bedrijf zoals SpeakUp - People Intouch of een privé/bedrijf detective objectief?

   Ik ken Speak up niet. Een privé detective krijgt een specifieke opdracht om bepaalde feiten te onderzoeken, dus is objectief t.a.v. de feiten, maar de selectie daarvan kan zijn beïnvloed door de opdracht. Anders dan een forensisch accountant, die alle feiten onderzoekt en op een rij zet, moet de privé detective doorgaans bewijs verzamelen van een bepaald feit.

6. Wat is de rol van de Ondernemingsraad in deze situatie? Is het verstandig om eerst naar de OR te gaan als klokkenluider?

   Bij een MM regeling heeft de OR doorgaans geen rol. Om onnodige schade voor betrokkenen (vooral ook de melder) te voorkomen kan een melding het beste vertrouwelijk, bij een VPI of vergelijkbaar instituut plaats vinden. Een belangrijk punt is ook dat eerst intern onderzoek moet worden verricht om vast te stellen of inderdaad sprake is van een misstand. Een goede MM regeling voorziet hier in.

7. Waar ligt de grens tussen “lekken van vertrouwelijke documenten” en “klokkenluiden”?

   Dat is in zijn algemeenheid niet te zeggen, maar het tweede is heel goed mogelijk zonder het eerste. Bij klokkenluiden hoeft het niet om vertrouwelijke informatie te gaan.

8. Hoe is het gesteld met de privacy van klokkenluiders en de bescherming van hun identiteit (online)?

   Die moet worden gewaarborgd door de MM regeling.

9. Worden mensen extra gecontroleerd door hun baas na het klokkenluiden? (Bijvoorbeeld hun computer, etc.)

   Bij mij is niet bekend dat dit gebeurt.

10. Hoe kijken jullie aan tegen het “wetsvoorstel Huis van Klokkenluiders”?

    Ontslagbescherming kan nuttig zijn om wettelijk vast te leggen (zoals bij leden van de OR). Het advies van de Raad van State (zie http://www.raadvanstate.nl/adviezen/samenvattingen/tekst-samenvatting.html?id=147) geeft goed weer wat de bezwaren zijn tegen het wetsvoorstel zoals dat voorligt.

11. Heeft het bedrijfsleven behoefte aan een verplichte klokkenluidersregeling waarin de grote lijnen van de inhoud ook vastgelegd zijn per wet?

    Ik geloof niet dat die behoefte bestaat. Veel ondernemingen stellen uit oogpunt van compliance en goed werkgeverschap een MM regeling in.

12. In ons onderzoek proberen wij ook met een oplossing te komen. Zou een oplossing kunnen werken waarin er een organisatie wordt opgezet waarin het Adviespunt Klokkenluiders, de experts van Expertgroep Klokkenluiders, mensen van de OIO en mensen van de FIOD gevestigd zijn. Met een fysiek gescheiden advies en

_De vraag is voor welk probleem je eet klokkenluiders niet n oplossing zoekt. En is dat probleem zodanig ernstig en komt het zo vaak voor dat het optuigen van een heel apparaat rechtvaardigt om klokkenluiders bij te staan. Bedenk ook dat klokkenluiders niet per definitie het gelijk of het recht aan hun zijde hebben._

Philippe Jochems
Sjors Melman
Attachment 4C ~ Meeting Expertgroep Klokkenluiders

Gerrit de Wit (bestuursvoorzitter) en Peter Kools (bestuursondersteuner)

Het gesprek is vertaald naar een format van vraag en antwoord en op die manier ingedeeld in categorieën. Vertrouwelijke zaken zijn niet opgenomen in dit gespreksverslag.

Gerrit de Wit (Bestuursvoorzitter)
- Voorzitter Stichting Expertgroep en directeur Expertgroep
- Verantwoordelijk voor operationele werkzaamheden
- Zowel gewerkt in bedrijfsleven, als het ministerie van VROM, recherche, politie en Openbaar Ministerie
- Thema’s: fraude en corruptie
- Klokkenluider bij Bijzondere Opsporings Dienst VROM:
  - over corruptie
  - vier ontslaggronden die juridisch aangevochten dienden te worden
  - vervolgens nog één motief over: ontslag vanwege verstoorde werkverhouding
- Tevens: juridisch adviseur en examinator
- Klokkenluidersproces heeft veel impact gehad

Peter Kools (Bestuursondersteuner)
- Bestuursondersteuner Stichting Expertgroep Klokkenluiders
- Arbeidsverleden bij gemeentelijke overheid
- Heeft zich als melder tot de Expertgroep gewend

Vragen en antwoorden

1. Wat is de definitie van een klokkenluider?

Het woord ‘klokkenluider’ wordt door media en klokkenluiders zelf, maar ook door bedrijven op de verkeerde manier gebruikt. Een klokkenluider is een werknemer die eerst vruchteloos intern heeft gemeld en daarna naar buiten treedt. Een melder van een misstand is een werknemer die alleen intern gemeld heeft.

2. Wat zijn de kenmerken van klokkenluiders?

Ingeval van een integere, naar behoren handelende klokkenluider is vaak sprake van een melder met een hoog-analytisch vermogen, die processen kan doorzien en overzien en loyaal blijft aan zijn professie en niet aan de macht. Officiële eigenschappen van een klokkenluider in de procedure: 1. Integer, 2. Te Goeder Trous, 3. Handelt naar behoren.
3. Welke cultuur heerst er in het bedrijfsleven rondom de klokkenluiders?

Nog steeds de cultuur dat klokkenluiders vermeden moeten worden. Het management levert vaak dezelfde response: 1. ontkening → 2. minimalisering → 3. bestrijding/vernietiging van bewijslast/neutralisering van melding/onschadelijk maken van melder. De huidige insteek is dat klokkenluiden, integriteit en compliance heel belangrijk zijn voor windowdressing van de organisatie. Vooral de buitenwereld moet weten dat er alles aan gedaan wordt. Ondanks de Corporate Governance Code of andere maatregelen is de bedrijfscultuur rond dit onderwerp nog weinig veranderd. Toch is er een lichtpuntje, want er is wel degelijk awareness.

4. Welke problemen kwam u tegen toen u het proces van klokkenluiden bewandelde?

Een probleem voor vele klokkenluiders is de Rechtstoepassing. Via recherche had Gerrit al veel kennis over procedures en het recht, maar een leek zal de hoeveelheid procedures zwaar vinden en zichzelf misschien ‘kapot’ procederen. Vervolgens is het belangrijk dat de juiste procedure gekozen wordt. De interne mogelijkheden: 1. direct leidinggevende, 2. vertrouwenspersoon, 3. P&O en HRM.

5. Denkt u dat deze problemen verholpen worden met het wetsvoorstel?

Voor de werkgever is het eenvoudig om bij verstoorde arbeidsrelaties en mogelijk disfunctioneren het contract te ontbinden. Het wetsvoorstel zorgt echter wel voor rechtsbescherming en de verplichting van een klokkenluidersregeling (zie Corporate Governance Code).

6. Hoe hebben collega’s of omstanders op uw klokkenluiden gereageerd?

Gerrit heeft met een collega de mistanden gemeld. Ook de bedrijfsarts heeft in een publicatie geschreven dat het bijzonder is wat de melders is overkomen. Dit zorgde weliswaar voor ondersteuning, maar kostte de bedrijfsarts zijn functie.

7. Hoe zit het met bedrijven zonder een klokkenluidersregeling?

Het Europees Recht geldt als er geen klokkenluidersregeling is. In Europese jurisprudentie staat dat een melder bescherming kan krijgen als hij als klokkenluider aan bepaalde eisen voldoet. Het moet bijvoorbeeld om een maatschappelijke misstand gaan.

8. Is het het klokkenluidersprobleem eigenlijk een samenvatting van hoe het Nederlandse bedrijfsleven in elkaar zit en welke cultuur daar heerst?

Zie vragen over bedrijfscultuur → Ja

9. Wat vindt u van informatie lekken naar pers (lees: PubLeaks)?


10. Waar ligt dan eigenlijk de grens tussen lekken en klokkenluiden?

Dat is situatie afhankelijk en heeft te maken met de aard van de organisatie (lees bijv. gevoelige informatie bij Defensie). Toch mag het niet als excuus worden gebruikt om niet over de essentie van de zaak te praten.
11. Wat vindt u van oplossingen zoals:
   a. In Amerika (Klokkenluiders kunnen veel geld verdienen)
   b. In Engeland (Omkering bewijslast wet)
   c. In Nederland (Speak-Up)

   a. De Amerikaanse oplossing om geld te geven aan een klokkenluider bij een degelijke zaak werkt wel degelijk als stimuli van incentief, maar genereert ook misbruik. Het is een extreme oplossing die, als instrument om misstanden weg te nemen, werkt. Het lijkt op de Tip-en-Toongeldregeling bij de politie.

   b. De Engelse oplossing om de bewijslast om te keren bij een actie tegen een klokkenluider kan een goede manier zijn om het proces voor integere klokkenluiders te vereenvoudigen. Deze wet verplicht bedrijven om aan de rechter te bewijzen dat een ontslagen klokkenluider niet ontslagen is vanwege het klokkenluiden, maar vanwege andere motieven.

   c. Speak-Up bij bijvoorbeeld VION zorgt enkel voor communicatie en kan vergeleken worden met Meld Misdad Anoniem. De anonimiteit kan ook zorgen voor non-valide meldingen. Maar naast de praktische bezwaren is iets anders veel belangrijker, want als zo’n oplossing nodig is in een bedrijf zegt het ook iets heel waarschijnlijk over de houding en bedrijfscultuur: dat alle communicatie maar donkere krukken en op afstand moet gebeuren. Dit legt de drempel erg hoog en bevordert niet het melden van misstanden. Voor de media en buitenwereld is het een vorm van Windowdressing en kan deze oplossing een cosmetische oplossing genoemd worden.

12. Wat was de situatie vroeger rond dit probleem? Bestond het überhaupt?

   Klokkenluiden is pas een ‘ding’ geworden sinds de jaren ‘90. Meer openbaring en meer verlangen naar transparantie zorgt ervoor dat zaken aan het licht komen en ook behandeld worden.


   De OR speelt een belangrijke rol in dit onderwerp, omdat zij in de positie verkeert om misstanden aan de orde te stellen. Het staat zelfs in de W.O.R. dat de OR het algehele functioneren van een organisatie kan agenderen. Het heeft ook een functie om de bedrijfscultuur te analyseren en te bespreken met het bevoegde gezag. Voorbeelden waarin OR-leden klokkenluiders helpen of willen ondersteunen komen soms voor.

14. Wat ziet u als de grootste drempel voor de meeste klokkenluiders?

   De enorme tijd, energie en kosten die het in beslag neemt en de risico’s die men daarbij loopt.

15. Zou u zich onder de huidige Corporate Governance Code veiliger voelen wat betreft klokkenluiden?

   Nee.

16. Sinds de komst van de Corporate Governance Code is het voor AEX genoteerde bedrijven ‘verplicht’ om een klokkenluidersregeling te hebben. Ziet u sinds deze invoering dat het aantal klokkenluiders gegroeid is?

   Daar zijn ons geen resultaten over bekend. De huidige klokkenluiders komen zowel van bedrijven met als zonder de CGC.
17. Hoe kijkt u tegen een wettelijk verplichte klokkenluidersregeling, die geldt als wettelijk minimum voor alle bedrijven?

Gerrit ziet wel wat in deze oplossing die aangedragen is. In de komende Wet Huis voor klokkenluiders is in een dergelijke verplichting voorzien.

Philippe Jochems
Sjors Melman
Contact:

Philippe Jochems & Sjors Melman
whistleblowerpws@gmail.com

Anselma Gietelink Hoogkamer
a.gietelinkhoogkamer@rijnlandslyceum-rls.nl

Harm Jan Langelaar
h.langelaar@rijnlandslyceum-rls.nl

In cooperation with:

Expertgroep Klokkenluiders
Multatulilaan 12
4103 NM Culemborg

With the support of:

Houthoff Buruma
Gustav Mahlerplein 50
1082 MA Amsterdam

Commissioned by:

Het Rijnlands Lyceum Sassenheim
Van Alkemadelaan 2
2171 DH Sassenheim