

Changes in the Dutch law pursuant to the EU Whistleblower Directive

What are the changes about?

Recently, individuals referred to as 'whistleblowers' and the position of such whistleblowers in companies are getting a lot of attention. For example, the Dutch television production 'ZEMBLA' frequently pays attention to specific cases where whistleblowers have played a key role.

A new European Directive was introduced in 2019, presenting the framework for the protection of whistleblowers. This European Directive stills needs to be formally implemented into the Dutch laws, which will result in the '**Wet bescherming klokkenluiders**', updating the existing Dutch 'Wet Huis voor Klokkenluiders'. This formal implementation is expected later this year (2022).

The 'Wet bescherming klokkenluiders' requires companies to review their existing whistleblower procedure and to update such procedure based on new requirements. Besides this, new conditions, set out in the 'Wet bescherming klokkenluiders' may result in an obligation for companies that currently are not required to have a whistleblower procedure, to set up and implement such a procedure.

The 'Wet bescherming klokkenluiders' indicates that companies with more than 50 employees, including staff, volunteers and interns, must establish a whistleblower procedure. Since the definition of 'employees' under the 'Wet bescherming klokkenluiders' is changed, more companies are required to implement a whistleblower procedure than before.

Also, a Works Council ('Ondernemingsraad') if established, needs to be involved and needs to approve any change of an existing whistleblower policy or the introduction of a completely new procedure.

What is new?

The 'Wet bescherming klokkenluiders' will introduce new rules, such as:

Measures for the protection of the whistleblower

- At whistleblower's discretion, the whistleblower is free to report an incident internally or externally with the competent authority (such as: ACM or DNB). There is no prescribed order for reporting.
- The scope of persons that are entitled to protection, is enlarged, e.g. including interns, trainees, former employees, family members, etc.
- Retaliation measures, aiming to protect the whistleblower against e.g. dismissal, suspension or harassment, are redefined, resulting in a broader scope of protection, since additional types of retaliation are added, such as: intimidation, negative references, non-renewal of a temporary employment contract.

Measures to amend the actual whistleblower procedure

- The 'Wet bescherming klokkenluiders' creates stricter rules for internal reporting procedures;
- The 'Wet bescherming klokkenluiders' provides for strict deadlines to observe. E.g. a confirmation of receipt of a report should be sent to the whistleblower within 7 days and the assessment of the report must follow within 3 months.

What happens in the event of non-compliance?

Non-compliance with the 'Wet bescherming klokkenluiders' may lead to the following consequences: An unlawful treatment of a whistleblower, e.g. spread false information, may be sanctioned under articles 261-262 Dutch Code of Criminal Law (defamation). Also, appropriate measures to prevent discovery of an (anonymous) identity of a whistleblower are a must, avoiding a conviction relating to breach of duty of confidentiality (article 272 Dutch Code of Criminal Law).

On the other hand, if a whistleblower misuses its rights under the 'Wet bescherming klokkenluiders' the affected party, e.g. a company (employer), may initiate legal proceedings, claiming defamation and/or compensation.

What can we do for you?

We are happy to review your existing whistleblower procedure and suggest updates. Also, we may create a new whistleblower procedure, ensuring you comply with the new rules.

We can also train your staff, explain your whistleblower procedure and improve awareness on this topic.

You can [contact](#) us to discuss the possibilities.