

Sectoral Regulation on Reporting Suspected Malpractice Dutch Universities (Dutch Universities Whistleblower Policy 2025)

Preamble

in view of the importance that the Dutch universities attach to having a proper and coherent integrity policy and, as part of this, a proper procedure for reporting suspected malpractice;

having regard to the Whistleblowers Protection Act and the EU Directive on the protection of persons who report breaches of Union law (Directive EU 2019/1937), which aim to improve the possibilities of reporting suspected malpractice that is of public interest and to better protect the reporting person from prejudice;

the Dutch Universities Sectoral Regulation on Reporting Suspected Malpractice was adopted as of 1 January 2025 and forms part of the Collective Labour Agreement for Dutch Universities (CAO-NU) as laid down in Article J.6 of the CAO-NU.

Article 1 Definitions

1. In this regulation, the following terms will have the following meanings:
 - a. Adviser: a person who can be consulted in confidence by a reporting person about suspected malpractice;
 - b. Advisory Department of the Whistleblowers Authority: the Advisory Department of the Authority referred to in Article 3a(2) of the Whistleblowers Protection Act;
 - c. Investigation Department of the Whistleblowers Authority: the Investigation Department of the Authority referred to in Article 3a(3) of the Whistleblowers Protection Act;
 - d. Executive Board: the Executive Board of a university as referred to in Article 1.1(1)(a) of the CAO-NU to which a report is made;
 - e. Committee: the Independent Malpractice Committee established by the Executive Board, being a committee of independent officers as referred to in Article 2(2)(d) of the Whistleblowers Protection Act;
 - f. Lawyer: a person with the title of Master of Laws or LL.M.
 - g. Reporting Person: a natural person who reports or discloses suspected malpractice in the context of work-related activities at the university. This can also be a third party, such as a student at the university;
 - h. Report: the report of suspected malpractice under this regulation;

- i. Malpractice: a violation or risk of violation of Union law, or an act or omission that places the public interest at risk due to:
 - 1. a violation or risk of violation of a statutory regulation or internal rules that involve a specific obligation and that are established by an employer on the basis of a statutory regulation,
 - 2. a danger to public health,
 - 3. a danger to the safety of individuals,
 - 4. a danger to the environment,
 - 5. a danger to the effectiveness of the organisation as a result of an inappropriate act or omission.

In any event, the public interest is at stake if the act or omission does not only affect personal interests and there is either a pattern or a structural nature, or the act or omission is serious or extensive;
 - j. Ombudsperson: the ombudsperson appointed by the university;
 - k. Suspected malpractice: the reporting person's suspicion of malpractice within the university. This suspicion should be based on reasonable grounds and based on knowledge gained at the university;
 - l. Confidential adviser: the person appointed to act in this capacity within the university;
 - m. University: university as referred to in Article 1.1(1)(a) of the CAO-NU;
 - n. Employer: the university;
 - o. Work-related context: future, current or past work-related activities at the university through which, regardless of the nature of that work, individuals may obtain information about malpractice and in which those individuals may experience prejudice as referred to in Articles 11 and 12 if they were to report such information.
2. If a report concerns the Executive Board or Executive Board member, 'the Executive Board' is replaced with 'the Supervisory Board' in this regulation.

Article 2 Information, advice and support

1. A reporting person may seek information, advice and support in relation to suspected malpractice from an adviser in confidence.
2. A reporting person may also seek information, advice and support in relation to suspected malpractice from a confidential adviser or the university's ombudsperson.
3. A reporting person may also seek information, advice and support in relation to suspected malpractice from the Advisory Department of the Whistleblowers Authority.

Article 3 Internal reports

1. A reporting person who suspected malpractice within the university may report to the committee designated for this purpose by the Executive Board or the university's central reporting centre as referred to in the CAO-NU.
2. The report may be made either in writing or verbally or, at the request of the reporting person, within a reasonable time by means of an on-site interview with the committee. If the report is made verbally (via telephone or voice message system), it is then recorded in writing and dated. The reporting person will receive a copy.

Article 4 External reports

The reporting person may at any time make an external report of suspected malpractice to the designated bodies mentioned in Article 2c of the Whistleblowers Protection Act.

Article 5 Appointment of a committee

1. The Executive Board will appoint a committee whose task is to investigate a reported suspicion of malpractice and to advise the Executive Board on this report.
2. The committee will consist of three members and at least three deputy members, including an independent external chair and a deputy external chair. At least one of the members will be a lawyer and one will be a behavioural expert.
3. The members and deputy members of the committee are independent of the university or legal entities affiliated to the university insofar as the university has a substantial interest in such entities. One of the members of the committee may be employed by the university, as long as they are functionally independent of the Executive Board.
4. Committee members will be appointed for a period of four years and are eligible for reappointment.
5. The committee will be supported by a secretary appointed by the Executive Board.
6. The appointment of a member of the committee may be terminated by the Executive Board, after the member has been heard, if there are compelling reasons to do so.

Article 6 Handling of internal reports

1. The reporting person will receive an acknowledgement of receipt from the committee within seven calendar days of a report being received.
2. The committee will inform the Executive Board of the receipt of the report and decide on its handling within six weeks of receiving the report in compliance with Article 8.
3. The committee will in all cases inform the reporting person within three months of receiving the report about the assessment or follow-up of the report, without prejudice to the time limits stated in Articles 8 and 9.

Article 7 The committee's investigation

1. The committee will investigate the report and advise the Executive Board accordingly. The advice will comply with Article 1a of the Whistleblowers Protection Act.
2. The committee is authorised to obtain all information necessary for the investigation within the entire university. Employees are required to cooperate with this investigation. The committee may request access to any documentation and correspondence the committee deems relevant to the investigation of the report.
3. The committee may hear or consult witnesses and experts, regardless of whether they are attached to the university. A report of the hearing or consultation will subsequently be drawn up.

Article 8 The committee's procedure

1. The committee will assess and decide whether to handle a report based on criteria that include the following:
 - a. the report must relate to suspected malpractice;

- b. the suspicion of malpractice must be based on reasonable grounds;
 - c. a clear description of the suspected malpractice, the time period during which it took place, any employees involved and any relevant written documents or other evidence.
2. The committee will not consider a report if:
 - a. the provisions of the previous paragraph have not been complied with;
 - b. the report is manifestly unfounded;
 - c. the public interest in an investigation or the seriousness of the malpractice is manifestly insufficient;
 - d. the suspected malpractice is subject to the assessment of authorities tasked with investigating criminal offences, the supervision of compliance with any statutory regulation or the Whistleblowers Authority;
 - e. another report concerning the same malpractice is currently being or has been handled by the committee, unless a new fact or circumstance has become known and this may lead to a different assessment of the malpractice in question;
 - f. an irrevocable court decision has already been rendered on the malpractice.
 3. The committee may give the reporting person an opportunity to supplement the report within a set time limit. In that case, the deadline for the investigation will be suspended.
 4. The committee will inform the Executive Board within five weeks of receiving the report whether the report will be handled.
 5. If the report is handled, the committee will give the reporting person an opportunity to be heard. A report of the hearing will subsequently be drawn up.
 6. The committee may also hear others. A report of the hearing will subsequently be drawn up.
 7. Within 12 weeks of sending the acknowledgement of receipt, the reporting person will be provided with information on the assessment and, where applicable, follow-up of the report.
 8. The committee will send the adopted investigation report to the Executive Board.
 9. The hearings and reports of the committee will not be public until decided otherwise in accordance with the provisions of the first paragraph of Article 9.
 10. Insofar as the procedure of the committee is not laid down in this regulation, it will be determined by the committee or its chair as they see fit.

Article 9 Subsequent procedure

1. The Executive Board will adopt a position on the reported suspicion of malpractice, taking into account the investigation report and the committee's advice. Within four weeks of receiving the investigation report and the committee's advice, the Executive Board will inform the reporting person in writing of its position on the reported suspicion of malpractice in a manner that does not affect the rights and freedoms of others, in particular the person or persons to whom the report relates. This document will state the measures that have been or will be taken as a result of the report. The investigation report and the committee's advice will be sent with the position of the Executive Board. The Executive Board will decide whether to make the investigation report public in compliance with the General Data Protection Regulation (GDPR). This does not prevent the reporting person from making their own report public.
2. If it becomes clear that the position cannot be issued within the aforementioned four weeks of receipt of the investigation report, the reporting person will be notified in writing,

stating the reason why a longer period is necessary. This information will contain an indication of the period within which the reporting person will receive the position.

3. The persons to whom the report relates will be informed by the Executive Board in the same way as the reporting person pursuant to paragraphs 1 and 2, unless this could harm the interests of the investigation or enforcement.

Article 10 Confidential treatment of the report and the identity of the reporting person

1. Any person involved in the handling of a report who receives information that they know or should reasonably suspect to be of a confidential nature has a duty to maintain confidentiality, except insofar as any statutory provision requires disclosure or insofar as the need to disclose arises from the duty to implement the Whistleblowers Protection Act.
2. Any person involved in a report will not disclose the identity of the reporting person and adviser or advisers without the express written consent of the reporting person and adviser or advisers and will treat information about the report in the strictest confidence.
3. The university will ensure that information on the report is stored in such a way that it is physically and digitally accessible only to those involved in the handling of this report.

Article 11 Protecting the reporting person from prejudice

1. The university will not prejudice the reporting person during and after the handling of the report in connection with reporting, on reasonable grounds, a suspicion of malpractice to the university, another organisation or an external body as referred to in Article 4.
2. As regards the person making a report, prejudice as referred to in paragraph 1 will in any case mean taking a prejudicial measure, such as:
 - a. dismissal or suspension;
 - b. a fine as referred to in Article 650 of Book 7 of the Dutch Civil Code;
 - c. demotion;
 - d. withholding a promotion;
 - e. a negative assessment;
 - f. a written reprimand;
 - g. transfer to another administrative unit;
 - h. discrimination;
 - i. harassment, bullying or exclusion;
 - j. libel or slander;
 - k. early termination of an agreement to provide goods or services;
 - l. withdrawal of a licence.
3. Prejudice also includes any threat and attempt to prejudice.
4. If the university proceeds to take prejudicial measures as referred to in paragraphs 2 and 3 against the reporting person within a reasonable time after a report is made, the university will explain why the measures are necessary and that the measures are unrelated to reporting a suspicion of malpractice on reasonable grounds.
5. The university will ensure that managers, colleagues and lecturers of the reporting person refrain from any form of prejudice in connection with the reporting of a suspicion of malpractice on reasonable grounds that interferes with the reporting person's professional or individual performance.

6. The university will hold employees who are guilty of prejudicing the reporting person to account for their actions and may give them a warning or impose a measure on them and remedy the prejudice.

Article 12 Protecting other persons involved from prejudice

1. The university will not prejudice other persons involved as a result of acting as an adviser to the reporting person.
2. The university will not prejudice the confidential adviser and the ombudsperson for performing the duties described in this regulation.
3. The university will not prejudice the committee or its members for performing the duties described in this regulation.
4. The university will not prejudice a person heard by the committee in connection with making a statement.
5. The university will not prejudice a person in connection with making a statement to the committee in good faith or providing information and/or documents relevant to the investigation.
6. Article 11 paragraphs 2 to 6 apply *mutatis mutandis* to the prejudice of the persons mentioned in paragraphs 1 to 5.

Article 13 Whistleblowers Authority investigation into prejudice to the reporting person

A reporting person who believes that they have experienced prejudice in connection with the reporting of suspected malpractice may request the Investigation Department of the Whistleblowers Authority to conduct an investigation into how the university behaved towards the reporting person in response to the reporting of suspected malpractice.

Article 14 Report, employee representation body and recording

1. The committee will draw up an annual report every year. This report will be sent to the Executive Board. The Executive Board will ensure the publication of an annual report. This report will state, in anonymised form, the number and an indication of the nature of the reports, the results of the investigation and the position of the Executive Board.
2. The Executive Board will give the employee representation body the opportunity to express its views on the handling of reports of suspected malpractice, the implementation of this regulation, and the annual report.
3. The university will record a report upon receipt in a register set up for this purpose.

Article 15 Unforeseen circumstances

In cases not covered by this regulation and not already determined by the committee on the basis of paragraph 10 of Article 8, the Executive Board or – in the case of a matter concerning the Executive Board or its members – the Supervisory Board will decide in line with the principles of the Whistleblowers Protection Act.

Article 16 Further implementation regulations

The university may adopt further administrative implementation regulations insofar as they do not affect confidentiality.

Article 17 Entry into force and cancellation of current policy

1. This regulation will enter into force on 1 January 2025, replacing an institution's existing Whistleblower Policy as of that date.
2. This regulation will be cited as the Dutch Universities Regulation on Reporting Suspected Malpractice (Dutch Universities Whistleblower Policy).
3. Any Whistleblower Policy of an institution that exists on the date of entry into force of this regulation will be cancelled with effect from that date.

This translation of the Sectoral Regulation on Reporting Suspected Malpractice Dutch Universities (Dutch Universities Whistleblower Policy 2025) is meant as a service to non-Dutchspeaking employees of universities. However, in case of a difference of interpretation, this translation cannot be used for legal purposes. In those cases, the Dutch text of the 'Sectorale Regeling Melden Vermoeden Misstand Nederlandse Universiteiten (Klokkenluidersregeling NU 2025)' is binding.

Explanatory notes

General

The Whistleblowers Protection Act (*Wet bescherming klokkenluiders*, Wbk) entered into force on 18 February 2023. The law is the successor to the old Whistleblowers Authority Act (*Wet Huis voor klokkenluiders*) and implements Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (OJEU 2019, L 305).

The Wbk protects persons reporting malpractice or suspected malpractice within organisations. Under the Wbk, persons reporting malpractice are better protected than before. If they claim to have been prejudiced by their employer as a result of their report, the burden of proof will now fall on the employer to prove that this is not the case. The law also protects reporting persons who are not employees. Employers must meet stricter requirements regarding their internal procedures for reporting malpractice. For example, after a report, employers must provide information to the reporting person on the progress of the investigation within three months at most.

The university sector has opted for a sectoral regulation based on the CAO-NU. Article J.6 of the CAO-NU states that this regulation is part of the CAO-NU.

Besides employees, it also protects others who carry out work-related activities, such as interns, self-employed workers, volunteers, contractors, subcontractors, suppliers and job applicants. These individuals are no longer required to report their concerns internally first, but can also choose to directly contact the Whistleblowers Authority or another competent authority, such as the Dutch Authority for the Financial Markets or the Dutch Data Protection Authority. Those who assist a reporting person and internal investigators of a report are now also protected from prejudice.

Some parts of the Whistleblower Protection Act have not yet entered into force. These include the obligation for employers to also handle anonymous reports. Once these regulations come into force, this Whistleblower Policy will be updated.

This sectoral regulation has been drawn up by Universities of the Netherlands (UNL) and applies to all universities and parties to the collective labour agreement. Under Article 2 of the Wbk, employers are required to establish an internal procedure for reporting suspected malpractice within the organisation. Based on the sectoral regulation based on the CLA, universities can develop their own further implementation regulations in line with Article 16 of the sectoral regulation.

Explanatory Notes Article by Article

Article 1

This article sets out the main definitions. The guiding principles for this are the terms set out in the Wbk.

With regard to the term reporting person (under g), the broad term from the Wbk is used, i.e. including students (and external students etc.) and other persons performing work-related activities (such as contractors, suppliers, etc.).

The term malpractice (under i) includes the legal definition. This concerns a violation of Union law, or an act or omission that places the public interest at risk in various situations as described under 1. to 5.

In any event, the public interest is at stake if the act or omission does not only affect personal interests and there is a pattern or a structural nature, or the act or omission is serious or extensive. A conflict in the working environment or any other environment therefore does not in itself constitute malpractice within the meaning of the Act and this regulation as such. There must be more than solely a personal interest before the public interest is at risk.

Subsection k stipulates that the suspicion of malpractice must always be based on reasonable grounds arising from knowledge gained by the reporting person during work or study.

Subsection o defines the term 'work-related context'. This covers current as well as future and past work-related activities.

If the report concerns the Executive Board or Executive Board of Directors member, the Supervisory Board will act in the place of the Executive Board.

Article 2

The reporting person can consult an adviser in confidence. These can also be people from outside the organisation, such as a lawyer, a trade union or a legal expenses insurer. The reporting person can of course also contact various officials within the organisation, such as confidential advisers or the ombudsperson. A reporting person can also contact the Whistleblowers Authority for information and advice.

Article 3

This article describes the procedure for internal reports to the university. The employer has a choice of appointing a separate independent officer for this purpose or setting up a separate independent committee. This sectoral regulation has opted for a committee consisting of independent officers.

Article 4

The reporting person may make an external report at any time to the designated bodies mentioned in the Wbk. This means that they are not required to make an internal report first. Reporting to the Whistleblowers Authority seems the most obvious option, however the choice also depends on the nature and content of the report. External reports can also be made to bodies such as the Dutch Data Protection Authority or the Health and Youth Care Inspectorate.

Article 5

This article provides for the appointment of an independent committee. Setting up a committee is not mandatory under the Wbk. The Wbk only requires the appointment of one or more independent officers. As stated above, the sectoral regulation opts for a committee. Each university sets up a committee and appoints its members. Universities have chosen to cooperate in this appointment of committee members. They will appoint the same group of committee members for each university, enabling committee members to gain more knowledge and experience within the sector and allowing committees to operate in a similar way across the university sector. The composition of the committee may change for each report, depending on the nature and volume of expected reports. Malpractice may involve very different aspects that may require different expertise.

The chosen approach was to appoint around 10 of the same committee members per university to ensure sufficiently diverse forms of expertise. The chair and deputy chair are always external, while the other members are independent of the Executive Board. One of these members can be employed by the university itself (but functionally independent), in order to ensure sufficient knowledge of the institution and its internal contacts.

Article 6

It is important to confirm the report in good time. The law stipulates that the reporting person must receive an acknowledgement of receipt within seven calendar days of a report being received. The committee must reach a decision on whether to handle the report within six weeks of receiving the report. By law, the reporting person must in all cases be informed within three months about the assessment or follow-up of the report, without prejudice to the time limits specified in Articles 8 and 9. It is important during the procedure to keep the reporting person regularly informed about the status of the report.

Article 7

If the report is handled, the committee considers the report and issues advice on it to the Executive Board. The committee is authorised to obtain necessary information. Employees are obliged to cooperate in this regard. Witnesses and experts may also be heard. The confidentiality of the report will be maintained during this process in accordance with Article 10.

Article 8

The committee first examines whether the report will be handled. Based on the grounds mentioned in Article 6 of the Wbk, the decision may be taken not to handle a report. The report must relate to suspected malpractice within the meaning of this regulation. The public interest in an investigation or the seriousness of the malpractice must justify an investigation. Other relevant factors include the timing of the report. If a report is not made in good time, it may be impossible to investigate the malpractice.

If the committee is of the opinion that the report should be handled, an investigation will be launched. The reporting person and others will be given the opportunity to be heard. The hearings are not open to the public.

The committee issues a report and advice to the Executive Board.

Article 9

After receiving the report and advice, the Executive Board notifies the reporting person in writing of its position on the report within four weeks. If this is not possible within four weeks,

the reporting person will be informed immediately, with an indication of the period within which a position can be expected.

Summary of deadlines:

- Acknowledgement of receipt of report: within seven calendar days
- Decision on whether report will be handled: within six weeks
- Information on progress in the handling of the report: within three months
- Position of the Executive Board: within four weeks of receipt of report/advice of independent officer/committee, with possibility of extension.

Article 10

The confidentiality of the procedure is important throughout. For the entire duration of the procedure, the identity of the reporting person and adviser or advisers will not be disclosed without the consent of the reporting person and adviser or advisers.

Article 11

The reporting person must not be prejudiced as a result of the report. This is an important principle. The ban on prejudice covers any form of prejudice, including threats of and attempts to prejudice. It covers all kinds of measures and actions that are detrimental or harmful in the context of an employment relationship. Suspension, dismissal or similar measures are the most far-reaching forms of prejudice, however it also includes less far-reaching measures such as transfer of tasks.

Article 12

Individuals other than the reporting person are also protected from prejudice. For example, the reporting person's adviser, the confidential adviser, the ombudsperson, members of the committee and employees participating in the investigation also enjoy protection.

Article 13

A reporting person who believes they have experienced prejudice in connection with making a report can have this investigated by a body such as the Whistleblowers Authority.

Article 14

Upon receipt, the employer submits the reports to a register set up for this purpose. The employer also produces an annual report and involves the employee representation body in this process.

Article 15

In cases not covered by this regulation, the committee, its chair or the Executive Board will decide in line with the principles of the Wbk.

Article 16

The employer may adopt implementation regulations such as rules of procedure, which may cover aspects such as where and how the report can be made, university-specific interpretation of regulations, further details of deadlines, etc.

Article 17

This sectoral regulation will enter into force on 1 January 2025. From that date, in conjunction with Articles 10.7 and 10.8 of the CAO-NU, the university's own Whistleblower

Regulations in force until that date will cease to apply. Any rules of procedure may be readopted to reflect the new regulation.