

# Dutch Whistleblower Protection Act

Text applicable from 18 February 2023

## Chapter 1. General provisions

### § 1. Definitions

#### *Section 1*

In this Act and the provisions based upon it:

'the Advisory Department' means the Authority's Advisory Department referred to in section 3a, subsection 2;

'the Investigation Department' means the Authority's Investigation Department referred to in section 3a, subsection 3;

'trade secret' means trade secret as referred to in section 1 of the Trade Secrets Protection Act;

'concerned third person' means:

- a) a third person who is connected with a reporting person and who could suffer a detriment at the hands of the reporting person's employer or a person or organisation with which the reporting person is otherwise connected in a work-related context; and
- b) a legal person that the reporting person owns, works for or is otherwise connected with in a work-related context;

'competent authority' means an authority referred to in section 2c;

'office' means the office referred to in section 3d;

'facilitator' means a natural or legal person who advises a reporting person in the reporting process in a work-related context and whose advice is confidential;

'the Authority' means the Whistleblowers Authority referred to in section 3;

'reporting person' means a natural person who reports or publicly discloses a suspected abuse in the context of his work-related activities;

'report' means a report of a suspicion of abuse;

'reporting channel' means the organisation and procedure of a competent authority for receiving and handling reports;

'abuse' means:

- a) a breach or risk of a breach of Union law, or
- b) an act or omission with regard to which the public interest is at stake in connection with:
  - (1°) a breach or risk of a breach of a statutory regulation or of internal rules that impose a specific obligation and have been established by an employer on the basis of a statutory regulation; or
  - (2°) a risk to public health, public safety or the environment, or an improper act or omission that jeopardises the proper functioning of the public services or an undertaking.

A public interest is in any event at stake if the act or omission affects more than just personal interests and is either part of a pattern or structural in nature, or is serious or broad in scope;

'Our Minister' means Our Minister of the Interior and Kingdom Relations;

'Our Minister concerned' means Our Minister who is responsible for the competent authority;

'follow-up/follow up/following up' means action taken by an employer or a competent authority to assess the accuracy of the allegations made by the reporting person and, where it is necessary and within their competence, to further investigate and take measures;

'directive' means Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (OJ L 305, 26.11.2019);

'breach of Union law' means an act or omission that:

- a) is unlawful and relates to the Union acts and areas falling within the material scope referred to in Article 2 of the directive; or
- b) defeats the object or the purpose of the rules in the Union acts and areas falling within the material scope referred to in Article 2 of the directive;

'suspected abuse' means a reporting person's suspicion of an abuse in the organisation at which he works or has worked or in another organisation if he has come into contact with that organisation through his work, in so far as the suspicion is based on reasonable grounds resulting from the knowledge gained by the employee in the service of his employer or from the knowledge obtained by the employee through his work at another business or organisation;

'requester' means a reporting person who requests the Investigation Department to institute an investigation;

'work-related context' means future, current or past work-related activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information on abuses and in which those persons could suffer a detriment as referred to in section 17da if they reported such information;

'employer' means a person who arranges or has arranged for work to be performed pursuant to a civil-law employment contract or an appointment under public law or a person who arranges or has arranged for work to be performed other than in the context of an employment relationship;

'employee' means a person who performs work pursuant to a civil-law employment contract or an appointment under public law or a person who otherwise performs work for payment in a subordinate relationship;

## § 1a. Duty of confidentiality and data protection

### *Section 1a*

1. Any person involved in reporting or investigating a suspected abuse and who in that capacity obtains access to information that he knows or has reasonable grounds to suspect is confidential has a duty of confidentiality regarding this information, except in so far as he is required by statutory regulation to disclose this information or the need to disclose this information is a logical consequence of his responsibilities in relation to the implementation of this Act.
2. Information of a confidential nature in any event means:
  - a) information about the identity of a reporting person and of the person to whom the abuse is attributed or with whom that person is associated, and information that can be traced back to that person; and
  - b) information concerning a trade secret.
3. The identity of a reporting person and information that can be used directly or indirectly to ascertain the reporting person's identity may not be disclosed without that person's consent.
4. If in the context of an investigation by a competent authority or of legal proceedings any statutory regulation requires the disclosure of the identity of a reporting person, that person will be notified in advance, unless that information could jeopardise the investigation or legal proceedings in question.
5. When notified as referred to in subsection 4, the reporting person or person concerned receives a written explanation of the reasons for the disclosure of the information about his identity.
6. A competent authority that receives information concerning trade secrets may use or disclose this information only in so far as it is necessary for the proper follow-up to the report.

### *Section 1b*

Section 1a and division 2 of chapter 1a do not apply in so far as specific rules for reporting a

breach of Union law apply to the sector-specific acts set out in Part II of the annex to the directive.

### *Section 1c*

1. Having regard to Article 9, paragraph 2 (g) of the General Data Protection Regulation, the prohibition on processing special categories of personal data referred to in division 3.1 of the General Data Protection Regulation (Implementation) Act does not apply if the processing is carried out by the Authority and is necessary for the performance of the tasks referred to in section 3a, subsection 2 (a) to (c) and subsection 3 (a) to (c) and section 17b, subsection 2, provided that there are appropriate safeguards in place to ensure that the privacy of the data subject is not disproportionately affected.
2. Having regard to Article 10 of the General Data Protection Regulation, the Authority may process criminal personal data as referred to in division 3.2 of the General Data Protection Regulation (Implementation) Act if the processing is necessary for the performance of the tasks referred to in subsection 1.

## § 2. Internal procedure

### *Section 2*

1. Any employer which usually has at least fifty employees in its employ draws up for them a procedure for reporting a suspected abuse within the organisation.
2. The procedure referred to in subsection 1 must in any event:
  - a) set out how an internal report is to be handled;
  - b) describe when a suspected abuse is deemed to exist, subject to the definition of a suspected abuse in this Act;
  - c) state that in any event an employee can report a suspected abuse in the following ways:
    - (1°) in writing;
    - (2°) orally by telephone or other audio messaging system; or
    - (3°) upon request within a reasonable period in a face-to-face conversation at a location;
  - d) identify the designated independent officer or officers to whom a suspected abuse can be reported and the independent officers who will follow up on the report with due care;
  - e) [this point has not yet entered into force;]
  - f) [this point has not yet entered into force;]
  - g) state that an employee may consult an adviser confidentially about a suspected abuse;
  - h) state that a reporting person must receive confirmation of receipt within seven days of the date on which the report is received;

- i) set a reasonable period of no more than three months after dispatch of the confirmation of receipt referred to in point (h) within which information must be provided to the reporting person about the assessment of and, to the extent applicable, the follow-up to the report.
3. Notwithstanding subsection 1, the minimum of fifty employees laid down therein does not apply to an employer that falls within the scope of the Union acts set out in Parts IB and II of the annex to the directive.
  4. Resources for receiving reports and conducting investigations into them may be shared by:
    - a) private sector employers with 50 to 249 employees; and
    - b) municipalities or public bodies as referred to in section 8, subsection 1 of the Joint Arrangements Act.
  5. The employer provides its employees with information in written or electronic form about:
    - a) the procedure referred to in subsection 1;
    - b) the way in which a suspected abuse can be reported outside the organisation to the competent authorities and, where applicable, to Union institutions, bodies, offices and agencies; and
    - c) the legal protection for an employee who reports a suspected abuse.
  6. The procedure referred to in subsection 1 can also be instituted for persons who are not employees but who otherwise perform or have performed work-related activities and, in that event, the information referred to in subsection 5 will also be made available to such persons.
  7. An employer as referred to in subsections 1 or 3 that has not established a works council or staff representation and that is also not required to do so must, in order to establish the procedure referred to in subsection 1, obtain the approval of more than half of its employees. This approval is not required in so far as the procedure is explicitly set out in a collective labour agreement.
  8. Every employee with an interest in doing so may petition the limited jurisdiction judge to order an employer to establish a procedure as referred to in subsection 1 within a period to be determined by the subdistrict court.

#### *Section 2a*

1. An employer as referred to in section 2 registers a report upon receipt in a register established for that purpose.
2. The data from reports in the register is destroyed once it is no longer needed in order to comply with the requirements of this Act or with other requirements laid down by or pursuant to Union law.

3. Further requirements can be established by ministerial order regarding the register referred to in subsection 1 and the data contained therein.

#### *Section 2b*

1. If a report is made using a telephone line or other audio messaging system, or if a reporting person makes a report in a face-to-face conversation at an agreed location, the employer must register the report by:
  - a) recording the conversation in a permanent and retrievable form, or
  - b) drafting a complete and accurate written account of the conversation.
2. For the recording of a conversation referred to in subsection 1 (a), the prior consent of the reporting person is required.
3. The reporting person is given the opportunity to check, correct and show agreement by signing the written account of the conversation referred to in subsection 1 (b).

#### *Section 2ba*

Sections 2 to 2b apply *mutatis mutandis* to the reporting of a suspected abuse within the Authority.

## Chapter 1a. External reporting channels

### § 1. Competent authorities

#### *Section 2c*

The authorities that are responsible for receiving and following up on reports, in so far as they are competent in the areas set out in Article 2 of the directive, are:

- (1°) the Netherlands Authority for Consumers and Markets;
- (2°) the Dutch Authority for the Financial Markets;
- (3°) the Data Protection Authority;
- (4°) De Nederlandsche Bank N.V.;
- (5°) the Authority;
- (6°) the Health and Youth Care Inspectorate;
- (7°) the Dutch Healthcare Authority;
- (8°) the Authority for Nuclear Safety and Radiation Protection; and
- (9°) organisations and administrative authorities, or units thereof, designated by an order in council or a ministerial order which have tasks or powers in one of the areas referred to in Article 2, paragraph 1 of the directive.

## § 2. Requirements for reporting channels

### *Section 2d*

1. A competent authority must establish a reporting channel for receiving and handling reports. For the purpose of handling reports, the reporting channel must offer the possibility of permanently storing information in accordance with the requirements set out in sections 2a and 2b, on the understanding that 'employer' should be read as 'competent authority', and that reports of a breach of Union law must be clearly distinguished as such in the register.
2. A reporting person can in any event make a report through a reporting channel in the following ways:
  - a) in writing;
  - b) orally by telephone or other audio messaging system; or
  - c) upon request within a reasonable period in a face-to-face conversation at a location.

### *Section 2e*

1. A competent authority must ensure that, after a report has been made, a careful assessment is made as to whether to follow up on the report.
2. After a report is made, the competent authority:
  - a) sends the reporting person confirmation of receipt promptly and in any event within seven days of receipt of the report, unless the reporting person expressly requests otherwise or unless the competent authority has reasonable grounds to believe that confirmation of receipt could jeopardise protection of the reporting person's identity;
  - b) informs the reporting person within three months of receipt of the report about the assessment of and, to the extent applicable, the follow-up to the report, unless this information could jeopardise the investigation or legal proceedings or unless it is contrary to a statutory duty of confidentiality; this period can be extended once by three months provided there is sufficient reason for doing so; and
  - c) informs the reporting person of the outcome of the investigation, unless this information could jeopardise the investigation or legal proceedings or unless it is contrary to a statutory duty of confidentiality.
3. If the competent authority considers that notification of the information referred to in subsection 2 (b) and (c) could jeopardise the investigation or legal proceedings, the reporting person will be informed of this in a timely manner.
4. If a competent authority receives a report which it is not competent to handle, the competent authority forwards the report promptly and in a secure manner to the competent authority that is competent, provided that the reporting person has given prior consent for this. If the reporting person does not give consent, the competent authority

must expressly inform the reporting person that if the report is not forwarded it will not be handled.

5. If another competent authority or body, or a body, office or agency of the European Union, is competent to further investigate, a competent authority will hand over to that authority, body, office or agency the information concerning a report that is necessary for that investigation within a reasonable period.

#### *Section 2f*

1. A competent authority can determine that a report will not be followed up if:
  - a) the breach of Union law is of little significance, or the public interest that would be served by an investigation or the seriousness of the abuse is manifestly insufficient;
  - or
  - b) the report concerns an abuse that the competent authority is already handling or has already disposed of, unless a new fact or a new circumstance has come to light and could lead to a different assessment of the abuse.
2. If, on the basis of subsection 1, a competent authority does not follow up on a report, the competent authority must, as soon as possible, inform the reporting person of this, stating the reasons, unless doing so is contrary to a statutory duty of confidentiality.
3. In the event of large numbers of reports, a competent authority can prioritise the handling of reports of serious abuses or of breaches of essential provisions that fall within the scope of the directive. The reporting person must be notified of this within the period referred to in section 2e, subsection 2 (b).

#### *Section 2g*

1. A competent authority designates staff members who are responsible for:
  - a) providing information upon request about the procedure concerning a report;
  - b) receiving reports;
  - c) investigating a report; and
  - d) maintaining contact with a reporting person.
2. A competent authority ensures that the staff members referred to in subsection 1 receive training so that they can perform their tasks properly.
3. If staff members who have not been designated to do so receive information about an abuse, they must hand over this information promptly and in full to the staff members who have been so designated on the basis of subsection 1.
4. Rules on the requirements that the training referred to in subsection 2 must meet may be established by ministerial order.



### Section 2h

1. A competent authority ensures that the following information is available:
  - a) the contact details of the competent authority's reporting channel;
  - b) the procedures that apply to a report, including in any event information about:
    - (1°) the way in which the competent authority can request the reporting person to clarify the reported information or provide additional information;
    - (2°) the period within which the reporting person is informed about the handling of the report and, if possible, the results thereof;
  - c) the duty of confidentiality referred to in section 1a that applies with respect to a report;
  - d) information about the processing of personal data;
  - e) the manner in which a report is handled, an investigation is carried out and, to the extent applicable, the measures that can be taken;
  - f) protective measures, as referred to in this Act, and the conditions under which a reporting person is eligible for such protection;
  - g) the conditions under which protection is offered against liability for a breach of confidentiality rules, as referred to in section 17f;
  - h) the options for confidential advice on submitting a report; and
  - i) the contact details of and a referral to the website of the Authority in connection with its duty referred to in section 3a, subsection 2.
2. The information referred to in subsection 1 must in any event be made available on a separate page on the competent authority's website.

### Section 2i

Every three years a competent authority will evaluate the procedures for receiving and investigating reports.

### Section 2j

This division applies *mutatis mutandis* to an administrative authority, an agency or other competent body which is not a competent authority and which, on the basis of a task or power conferred by or pursuant to the law or by mandate, receives a report of a breach of Union law.

## Chapter 1b. Obligation of bodies that investigate suspected abuses to provide information

### Section 2k

1. An administrative authority, an agency or a body which, on the basis of a task or power conferred by or pursuant to the law, investigates a suspected abuse, must ensure that a reporting person is informed about the assessment of and, to the extent applicable, the follow-up to his report within a reasonable period communicated by the administrative

authority, the agency or the body, unless that information could jeopardise the investigation or related legal proceedings or unless it is contrary to a statutory duty of confidentiality.

2. If the administrative authority, the agency or the body is of the opinion that information concerning the progress of the investigation could jeopardise the investigation or related legal proceedings, the reporting person will be notified of this in a timely manner.

## Chapter 2. The Whistleblowers Authority

### § 1. Establishment and task

#### *Section 3*

1. There is a Whistleblowers Authority.
2. The Autonomous Administrative Authorities Framework Act, with the exception of sections 12, 21 and 22, applies to the Authority.
3. Notwithstanding section 20 of the Autonomous Administrative Authorities Framework Act, the Authority's obligation to furnish Our Minister with information or to allow Our Minister to inspect business information and documents is restricted to data and documents relating to the Authority's financial management and accounting system.
4. Section 23 of the Autonomous Administrative Authorities Framework Act applies only in relation to the Authority's financial management and accounting system.

#### *Section 3a*

1. The Authority has an Advisory Department and an Investigation Department.
2. The task of the Advisory Department is:
  - a) to provide information and advice to a natural person who, in the context of his work-related activities, has made or intends to make a report, to a person who assists this person and to a concerned third person about the steps to be taken in relation to a suspected abuse and about the rights of these persons;
  - b) to refer the matter to administrative authorities or to agencies responsible for investigating criminal offences or monitoring compliance with any provision laid down by or pursuant to statutory regulation or to any other competent authority to which a suspected abuse may be reported;
  - c) to refer the matter to bodies or organisations that can provide legal or psychosocial support; and
  - d) to provide general information about dealing with suspected abuses.

3. The task of the Investigation Department is:
  - a) to determine whether the request can be handled, taking account of the conditions referred to in section 6, subsection 1;
  - b) in response to a request, to institute an investigation into:
    - (1°) a suspected abuse;
    - (2°) how the employer has treated the reporting person following a report;
  - c) to institute an investigation into a suspected abuse following one or more requests for advice, taking into account section 3k, subsection 3 and section 6, subsection 1; and
  - d) to formulate general recommendations on dealing with a suspected abuse;
  - e) [this point has not yet entered into force.]
4. Without prejudice to subsections 2 and 3, it is the Authority's task to promote knowledge with a view to fostering an organisational culture in which reports of suspected abuses in a work-related context are handled in a careful and appropriate manner.

#### *Section 3b*

1. The management board of the Authority consists of a chairperson and not more than four members.
2. The board members are appointed to either the Advisory Department or the Investigation Department. A member may not be appointed to both departments.
3. A board member who has been involved in advising on a suspected abuse may not take part in an investigation into the same abuse.
4. The chairperson is responsible for the proper functioning of the Authority.

#### *Section 3c*

1. The board members and chairperson of the Authority are appointed by Royal Decree. Their appointment may be terminated by Our Minister at their own request. They may also be suspended and dismissed by Royal Decree on the grounds of unsuitability or incompetence or for other compelling reasons related to the person concerned. A proposal for suspension or dismissal will not be made until the Authority has been consulted on the matter.
2. The board members are selected in such a way as to ensure that all relevant expertise is available in the Authority for the performance of the tasks referred to in section 3a.
3. The board members are appointed for a term of office of not more than four years. The term of office of a board member appointed to fill a casual vacancy is equal to the remainder of the term of office of the board member in whose place the former has been appointed. Board members may be reappointed twice.

4. The chairperson and the board members may not hold positions that could jeopardise the proper performance of their role or compromise their impartiality and independence or confidence in such impartiality and independence.

#### *Section 3d*

1. The management board of the Authority is supported by an office.
2. Notwithstanding section 4.6, subsection 1 of the Government Accounts Act 2016, the chairperson represents the State when entering into, amending and terminating individual employment contracts with the Authority's staff members.
3. The staff members are selected in such a way as to ensure that all relevant expertise is available in the office.
4. The office consists of staff members appointed to the Advisory Department as advisers, staff members appointed to the Investigation Department as investigators and staff in the general service of the Authority.
5. A staff member who, in the capacity of adviser, has been involved in advising on a suspected abuse may not take part in an investigation into the same abuse.

#### *Section 3e*

Office staff members may not be members of the Authority's management board.

### § 2. Procedure

#### *Section 3f*

1. The members of the Authority's management board are not bound by any mandate or instructions.
2. A board member refrains from taking part in the provision of advice or the conduct of an investigation as referred to in section 3a, subsections 2 and 3, if:
  - a) it concerns himself or one of his relatives by blood or marriage up to and including the fourth degree;
  - b) it concerns an institution or legal person for which he works or has worked or in which he has an interest;
  - c) it concerns a suspected abuse in which he might be or have been involved;
  - d) involvement might otherwise give rise to an apparent conflict of interest.

#### *Section 3g*

1. An office staff member immediately notifies the Authority's chairperson if the provision of advice or the conduct of an investigation referred to in section 3a, subsections 2 and 3:
  - a) concerns himself or his relatives by blood or marriage up to and including the fourth degree;

- b) concerns an institution or legal person for which he works or has worked or in which he has an interest;
- c) concerns a suspected abuse in which he could possibly be or have been involved;
- d) could otherwise give rise to an apparent conflict of interest.

2. The chairperson decides whether the member of staff must for this reason refrain from taking part in the provision of advice or the conduct of an investigation.

#### *Section 3h*

The Authority draws up and publicly discloses a set of management board rules and an advice and investigation protocol.

#### *Section 3i*

Section 1a applies *mutatis mutandis* to anyone who is involved in performing the other tasks of the Authority.

#### *Section 3j*

[Repealed on 18 February 2023]

### § 3. Advice

#### *Section 3k*

1. A natural person who in the context of his work-related activities has made or intends to make a report, a person who advises this person and a concerned third person may ask the Advisory Department for information and advice in relation to a suspected abuse. There is no prescribed form for requests for advice.
2. Information and advice may be provided both orally and in writing. The form in which the information or advice is provided is a matter for the Advisory Department to decide.
3. Neither the information about a suspected abuse provided in a request for advice nor the advice itself is disclosed to the Investigation Department unless the reporting person has declared in writing that he has no objection to this.
4. Information about the advice in the Authority's possession is not in the public domain.

### § 4. Investigation of suspected abuses by the Investigation Department

#### *Section 4*

1. A reporting person may:

- a) report a suspected abuse to the Investigation Department for the purposes of an investigation, or
- b) request the Investigation Department to institute an investigation into the manner in which the employer has acted in relation to him following a report.

2. This section does not apply to:

- a) judicial officers as referred to in section 1, subsection b, (1°) to (4°) of the Judiciary (Organisation) Act;
- b) anyone who is or has been involved in the implementation of the Intelligence and Security Services Act 2017 and the Security Screening Act, in so far as the implementation of these acts is concerned.

#### *Section 4a*

Sections 5 to 17 apply *mutatis mutandis* to a request as referred to in section 4, subsection 1 (b), on the understanding that in those sections 'a suspected abuse' and 'the abuse' should be read as 'the conduct of the employer' and sections 2d, 2e and 5, subsection 1, opening words and (a), in so far as the request concerned is submitted by a confidential adviser or a lawyer, do not apply.

#### *Section 5*

1. A request as referred to in section 4, subsection 1 (a) must, in accordance with section 2d, subsection 2, be submitted by the requester or his authorised representative and signed if the request is drawn up in writing. The request must contain at least:

- a) the name and address of the requester or of the confidential advisor or the lawyer who submits the request on behalf of a reporting person whose identity data is not disclosed;
- b) the date of the request;
- c) a description of the suspected abuse, including the name of the employer suspected of the abuse, and
- d) the grounds on which the suspicion of an abuse is based.

2. Section 9:28, subsections 2 and 3 of the General Administrative Law Act applies *mutatis mutandis* to the request.

#### *Section 6*

1. Without prejudice to section 2e, the Investigation Department institutes an investigation within six weeks of the date of the request, unless it determines that:

- a) the request does not fulfil the requirements specified in section 5;
- b) the request is manifestly unfounded;
- c) the public interest that would be served by an investigation by the Investigation Department or the seriousness of the abuse is manifestly insufficient;
- d) the suspected abuse is under consideration by administrative authorities or agencies charged with investigating criminal offences or with monitoring compliance with

provisions laid down by or pursuant to any statutory regulation or any other competent authority to which a suspected abuse can be reported, and the administrative authority, the agency or other competent body is handling or has handled properly the report of a suspected abuse;

- e) the requester has reported the suspected abuse to a line manager, confidential advisor or other person designated in an internal procedure as referred to in section 2 of the organisation in which there is a suspected abuse, and the organisation has handled the report of the suspected abuse properly;
- f) another request relating to the same abuse is being handled or has been disposed of by the Investigation Department, except where a new fact or a new circumstance which could have led to a different determination on the matter has become known; or
- g) the abuse has already been the subject of a court judgment that has become final and unappealable.

2. If the Investigation Department does not institute an investigation, the determination referred to in subsection 1 is not made public.

3. The Investigation Department is not obliged to continue an investigation if:

- a) in the opinion of the Investigation Department, the requester does not cooperate sufficiently to enable the investigation to be carried out with due care and to maintain the confidentiality of the results of the investigation; or
- b) a new fact or a new circumstance becomes known on the basis of which the Investigation Department determines that the request is manifestly unfounded.

#### *Section 7*

1. If the Investigation Department decides not to institute or continue an investigation, the Department will give written notice of this decision and the reasons for it as quickly as possible to the requester.

2. In the event that the Investigation Department does not continue an investigation, it will also give notice, as referred to in subsection 1, to the employer.

#### *Section 8*

1. The Investigation Department endeavours to complete the investigation within a year of completion of the determination referred to in section 6, subsection 1.

2. The Investigation Department may, on the basis of its investigation, make recommendations to the employer.

3. A determination or recommendation does not constitute a finding of civil liability for an abuse or a presumption of guilt of any criminal offence.

## § 4a. Investigations in the public sector

### Section 9

This division applies to investigations by the Investigation Department in cases where the employer is within the public sector. The public sector comprises:

- a) the state;
- b) the provinces;
- c) the municipalities;
- d) the water boards;
- e) the public bodies for the professions and trades;
- f) the other public bodies to which legislative powers are granted pursuant to the Constitution;
- g) the European groupings of territorial cooperation (EGTC) which have their registered office in the Netherlands;
- h) the other legal persons established under public law; and
- i) legal persons established other than under public law whose core activity is the exercise of public authority vested in one of their organs.

### Section 10

1. Sections 9:30 to 9:34 of the General Administrative Law Act apply, *mutatis mutandis*, to an investigation by the Investigation Department, provided always that in each case the term 'administrative authority' is replaced by 'employer' and the term 'the ombudsman' by 'the Investigation Department'. If the employer is represented by an organ consisting of two or more members, the term 'institute' (*college*) means that organ.
2. Notwithstanding section 9:31, subsection 4 of the General Administrative Law Act, the persons summoned to appear pursuant to section 9:31, subsection 1 or obliged to lodge documents pursuant to section 9:31, subsection 3 may refuse to furnish information or, as the case may be, lodge documents if the provision of the information and papers concerned is contrary to the interests of national security or entails a breach of official secrecy or a statutory regulation. Nor does this obligation apply if a person would consequently expose himself, a relation by blood or marriage in the direct or collateral line



in the second or third degree, or his present or former spouse or his present or former registered partner to the risk of conviction for a serious offence.

3. During an investigation the Investigation Department may direct that persons who have not appeared in response to a lawful summons should be brought before it by the authorities in order to fulfil their obligations.
4. During an investigation as referred in subsection 1, Our Minister concerned may prohibit the Investigation Department from entering certain places if this would, in his opinion, compromise state security.

#### § 4b. Investigations in the private sector

##### *Section 11*

This part applies to investigations by the Investigation Department where section 9 is not applicable.

##### *Section 12*

The Investigation Department exercises its powers only in so far as this is reasonably necessary for the performance of its duties.

##### *Section 13*

1. The Investigation Department is authorised to request information and demand to inspect case data and documents.
2. The employer suspected of the abuse, employees for whom it is responsible, witnesses and the requester are all obliged to provide the specified information in full and truthfully and are also obliged to appear before the Investigation Department.
3. The Investigation Department determines how and within what period the information is to be provided.
4. The employer suspected of the abuse is obliged to provide the case data and documents fully and truthfully within such period and in such manner as the Investigation Department may specify.
5. The persons summoned to appear pursuant to subsection 2 or the employer obliged to submit documents pursuant to subsection 4, as the case may be, may inform the Investigation Department that the information or documents, as the case may be, may not be disclosed to other persons.
6. Persons may refuse to furnish information or submit documents, as the case may be, if the provision thereof would be contrary to the interests of national security or entail a breach of a duty of professional secrecy or a statutory regulation. Nor does this obligation apply if

the person concerned would consequently expose himself, a relation by blood or marriage in the direct or collateral line in the second or third degree, or his present or former spouse or his present or former registered partner to the risk of conviction for a serious offence.

7. The Investigation Department decides whether a disclosure limitation as referred to in subsection 5 or a refusal as referred to in subsection 6 is justified.
8. If the Investigation Department decides that the refusal is justified, the obligation ceases to apply.

#### *Section 14*

1. The Investigation Department gives the employer and the requester the opportunity to explain their position on the suspected abuse.
2. The Investigation Department decides whether the explanation should be given orally or in writing and whether or not it should be given by the parties in each other's presence.

#### *Section 15*

1. In the interests of an investigation the Investigation Department may instruct experts and summon persons to be heard as experts or to act as interpreters.
2. Experts or interpreters summoned by the Investigation Department appear before it and provide their services impartially and to the best of their knowledge.
3. Witnesses are not heard and interpreters are not allowed to perform their duties until they have sworn the requisite oath or made the requisite affirmation. Witnesses are required to swear or affirm that they will tell the whole truth and nothing but the truth, and interpreters that they will faithfully discharge their interpreting duties.

#### *Section 16*

Requesters, witnesses, experts and interpreters summoned by the Investigation Department are awarded a fee from public funds. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act apply *mutatis mutandis*.

### § 5. Reporting

#### *Section 17*

1. Once an investigation has been completed, the Investigation Department prepares a report setting out its findings and determination. In doing so, it takes into account section 5.1 of the Open Government Act.
2. The report in any event contains the following, in so far as they are within the scope of the investigation:
  - a) an analysis of the abuse;

- b) determination of the causes or probable causes of the abuse and the extent of its consequences, and
  - c) where appropriate, recommendations to the employer.
3. The Investigation Department sends a draft of the report to the employer concerned and the requester.
  4. The employer and the requester may submit written comments within four weeks of the day on which the draft report is sent. They are bound not to disclose the draft of the report.
  5. The Investigation Department may modify the report if this is warranted by the comments. If the comments do not warrant modification of the report, the Investigation Department will state the reasons for this in its report.
  6. If the Investigation Department makes a recommendation to an employer as referred to in subsection 2, the employer informs the Investigation Department within a reasonable period how it intends to implement the recommendation. If the employer is considering not implementing the recommendation, it informs the Investigation Department accordingly, stating its reasons.
  7. The Investigation Department may publicly disclose the report on its own initiative.
  8. Information about the investigation which is in the Authority's possession and not included in the report is not in the public domain.

## § 6. Relationship to other procedures

### *Section 17a*

1. To promote coordination and consultation between them, the Authority and the Board of Procurators General will make agreements about cooperation and the exchange of information within six months of the entry into force of the Act. These agreements will in any event cover cases in which a particular issue leads to the institution of an investigation both by the Investigation Department (into a suspected abuse) and by the Public Prosecution Service (into a criminal offence). The agreements require the approval of Our Minister of Security and Justice.
2. The agreements about cooperation and the exchange of information will be recorded in a cooperation protocol.
3. If both the Investigation Department and the Public Prosecution Service institute investigations into a suspected abuse and a criminal offence respectively in a specific case, they must hold consultations about the structure of both investigations in accordance with the cooperation protocol.

### *Section 17b*

1. To promote coordination and consultation the Authority may conclude cooperation protocols with competent authorities and other administrative authorities or other agencies charged with monitoring compliance with the provisions laid down by or pursuant to any statutory regulation. Section 17a, subsection 3 applies *mutatis mutandis*.

2. The Authority, a competent authority and an administrative authority or an agency, as referred to in paragraph 1, are authorised to provide personal data to each other at their own initiative and upon request if this is necessary for assessing or following up on a report with which they are involved.

## § 7. Follow-up on recommendations

### *Section 17c*

Each year the Authority sends both Houses of the States General an overview of its recommendations and the actions taken on them.

### *Section 17d*

The Investigation Department is authorised to carry out a survey to determine what has been done to implement recommendations made in previous investigations.

## Chapter 2a. Protective measures against detriment

### *Section 17da*

1. In this chapter detriment is in any event understood as:

- a) dismissal or suspension;
- b) a fine as referred to in article 650 of Book 7 of the Civil Code;
- c) demotion;
- d) withholding promotion;
- e) a negative assessment;
- f) a written reprimand;
- g) transfer to another location;
- h) discrimination;
- i) intimidation, bullying or exclusion;
- j) defamation;
- k) early termination of a contract for the provision of goods or services; and
- l) revocation of a permit.

2. Detriment includes a threat of or attempt to cause detriment.

### *Section 17e*

A reporting person may not suffer a detriment during or after the handling of a report of a suspected abuse if at the time the report was made to the employer, a competent authority or an administrative authority, an agency or other competent body, as referred to in section 2j,

the reporting person had reasonable grounds to believe that the information provided about the suspected abuse was correct at the time of reporting.

#### *Section 17ea*

1. A reporting person may not, during or after the public disclosure of a suspected abuse, suffer a detriment if:
  - a) the reporting person had reasonable grounds to believe that the information reported about the suspected abuse was correct at the time of disclosure;
  - b) the reporting person, prior to the disclosure, made a report:
    - (1°) to the employer and a competent authority or an administrative authority, an agency or other competent body as referred to in section 2j; or
    - (2°) directly to a competent authority or an administrative authority, an agency or other competent body as referred to in section 2j; and
  - c) on the basis of the information referred to in section 2e, subsection 2 (b) or section 2k, subsection 1, the reporting person has reasonable grounds to believe that insufficient progress has been made in the investigation.
  
2. Nor may a reporting person suffer a detriment during or after the public disclosure of a suspected abuse, on the condition referred to in subsection 1 (a), and if the reporting person has reasonable grounds to believe that:
  - a) the abuse constitutes an imminent or manifest danger to the public interest;
  - b) in the case of reporting to a competent authority or another competent body, there is a risk of a detriment; or
  - c) there is a low prospect of the abuse being addressed effectively.

#### *Section 17eb*

If a reporting person suffers a detriment during or after the handling of a report made to the employer, a competent authority or an administrative authority, an agency or other competent body as referred to in section 2j, or following the public disclosure of a suspected abuse, it will be presumed that the detriment suffered is the result of the report or disclosure.

#### *Section 17ec*

Sections 17e, 17ea and 17eb apply *mutatis mutandis* to the facilitator, a concerned third person and an officer, as referred to in section 2, subsection 2 (d).

#### *Section 17f*

1. Without prejudice to the provision laid down by or pursuant to the law regarding the protection of national security, the protection of legal professional privilege, the protection of medical professional privilege, the secrecy of judicial deliberations and criminal procedural law, a reporting person who reports or publicly discloses a suspected abuse is not liable for a breach of any restrictions regarding the public disclosure of information if:
  - a) he has reasonable grounds to believe that the reporting or disclosure of the information is necessary in order to reveal the abuse; and

- b) the reporting or disclosure is done in accordance with the conditions of this Act.
2. A reporting person who meets the conditions referred to in subsection 1 is not liable for obtaining or gaining access to information that is contained in the report or that is publicly disclosed, unless obtaining or gaining access to the information is a criminal offence.
  3. The burden of proving that the conditions as referred to in subsections 1 and 2 have not been met lies with the person who holds the reporting person liable.
  4. Section 3, subsection 2 of the Trade Secrets Protection Act applies to a report or public disclosure within the meaning of this Act.
  5. Subsections 1 to 4 apply *mutatis mutandis* to the facilitator and a concerned third person.

#### *Section 17g*

A competent authority and an administrative authority, an agency or a competent body referred to in section 2j provides the reporting person with the evidence and documents to demonstrate in proceedings in which legal protection is sought that a suspected abuse has been reported.

#### *Section 17h*

1. Any clause is null and void in so far as it limits or eliminates the right to report or publicly disclose a suspected abuse with due regard for the provisions of this Act.
2. Subsection 1 does not apply:
  - a) in so far as the clause was agreed for the purposes of the implementation of a statutory provision to this effect;
  - b) to clauses agreed before the date on which this section enters into force.

#### *Section 17i*

[This section has not yet entered into force]

### Chapter 3. Amendments to other legislation

#### *Section 18*

[Amends Book 7 of the Civil Code.]

#### *Section 18a*

[Amends the Central and Local Government Personnel Act 2017.]

#### *Section 18b*

[Amends the Police Act 2012.]

*Section 18c*

[Amends the Military Personnel Act 1931.]

*Section 18d*

[Amends the Works Councils Act.]

*Section 18e*

[Repealed on 1 January 2020.]

*Section 18f*

[Repealed on 1 January 2020.]

*Section 18g*

[Amends the Open Government Act (parliamentary paper 33328).]

*Section 18h*

[Amends this Act.]

## Chapter 4. Transitional and concluding provisions

*Section 20*

1. Our Minister will send a report on the effectiveness and practical impact of this Act to the States General within three years of the date of entry into force of the Act amending the Whistleblowers Authority Act and any other legislation implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (OJ L 305, 26.11.2019) and any other amendments, and every three years after that.
2. The Authority and competent authorities and employers as referred to in this Act will cooperate in the preparation of the report referred to in subsection 1, and provide Our Minister with the necessary information for this purpose.

*Section 21*

The Investigation Department is not obliged to institute an investigation if the requester reported a suspected abuse to the employer or the competent authority more than a year before the entry into force of this Act.

*Section 21a*

1. Further rules on the organisation of the Authority may be laid down by or pursuant to order in council.

2. The recommendation for an order in council to be introduced pursuant to subsection 1 will not be made until four weeks after the draft has been presented to the States General.

#### *Section 21b*

1. Sections 1a, 2a, 2b, 2d, subsection 2, 2e, 2f, 2j, 2k, 5a, 17b, 17e, 17ea, 17eb, 17ec, 17f and 17g do not apply to:
  - a) a report of a breach of Union law to an employer that is part of the public sector as referred to in section 9 or to a competent authority that was made before 17 December 2021; and
  - b) a report other than a report as referred to in subsection (a) made before the entry into force of the Act of 25 January 2023 amending the Whistleblowers Authority Act and any other legislation implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (OJ L 305, 26.11.2019) and any other amendments.
2. Sections 2, subsection 2 (d), 3i, 3j and 6, subsection 1 (e) of this Act, article 658c of Book 7 of the Civil Code, section 12quarter, subsection 2, and 12o, subsection 5 of the Military Personnel Act, and section 47, subsection 2 of the Police Act 2012 as they read on the day before the entry into force of the Act of 25 January 2023 amending the Whistleblowers Authority Act and any other legislation implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (OJ L 305, 26.11.2019) and any other amendments, continue to apply to:
  - a) a report of a breach of Union law to an employer that is part of the public sector as referred to in section 9 or to a competent authority that were made before 17 December 2021, and
  - b) a report other than a report as referred to in subsection (a) made before the entry into force of the Act of 25 January 2023 amending the Whistleblowers Authority Act and any other legislation implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (OJ L 305, 26.11.2019) and any other amendments.

#### *Section 21c*

1. Section 2 as it read on the day before the entry into force of the Act of 25 January 2023 amending the Whistleblowers Authority Act and any other legislation implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (OJ L 305, 26.11.2019) and any other amendments continue to apply to employers in the private sector with 50 to 249 employees until 16 December 2023 inclusive.
2. Sections 2 to 2b as they read following the entry into force of the Act of 25 January 2023 amending the Whistleblowers Authority Act and any other legislation implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October



2019 (OJ L 305, 26.11.2019) and any other amendments apply to employers in the private sector with 50 to 249 employees as of 17 December 2023.

*Section 22*

This Act enters into force on a date to be determined by Royal Decree.

*Section 23*

This Act may be cited as the Dutch Whistleblower Protection Act.