

Beyond the formality:

Preconditions for well-functioning internal reporting procedures and processes

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The rapidly growing recognition of the importance of whistleblowing mechanisms and of the need to protect persons who report organizational wrongdoings has led to international standards organizations have to comply with. But do these formal standards guarantee well-functioning reporting procedures and successful reporting processes? Unfortunately, the answer is no. Empirical research in combination with insights from the literature lead to a new and more realistic reporting processes and procedures.

1. Beyond the formality

Today, various legislative initiatives are being taken to protect persons who report integrity violations and other types of wrongdoing. For example, the European Whistleblower Directive² which all member states are obliged to comply with since 17 December 2021. In the Netherlands, this will lead to the Whistleblowers House Act being replaced by the Whistleblower³ Protection Act.

Also, a European Directive Corporate Sustainability Reporting Directive (CSRD)⁴ which will tighten up existing guidelines for reporting non-financial information. The CSRD requires large companies and listed companies to publish a sustainability report as part of the management report, which also includes measures to protect whistleblowers and to prevent corruption.

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

³ https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en#review

But do these formal laws and regulations automatically guarantee well-functioning reporting procedures and successful reporting processes? We do not think so and therefore focus on the question: what *is* needed for well-functioning reporting procedures and successful reporting processes?

To answer that question, we use insights from recent social-scientific research that was carried out by Utrecht University, commissioned by the Dutch Whistleblowers' Authority. These insights are supplemented with literature on 'soft controls' and integrity management. Combined, these insights lead to a set of practical recommendations for employers, compliance professionals, confidential advisers, works councils and other actors who are responsible for well-functioning internal reporting mechanisms.

The article starts with an outline of the legal requirements for reporting procedures that organizations must comply with. We then look at a set of soft-controls that influence a reporting procedure. We also argue that reporting procedures are more effective when they make part of a comprehensive and coherent compliance program. Finally, we present the most important recommendations from a recent study by Utrecht University into successful internal reporting processes.

2. Legal Requirements

In the Netherlands employers with 50 or more employees are since 1 July 2016, required by law (the Whistleblowers' Authority Act) to have a reporting procedure for suspected wrongdoings in place. Currently, that law is being renewed as a result of the EU Whistleblower Directive⁵ which aims to improve the protection of whistleblowers who report a breach of Union law, such as breaches in the field of public health, consumer protection, data protection, public procurement, financial services, money laundering, product and transport safety or nuclear safety. All European member states must transpose the Directive into national law.

In the Netherlands, the transposition takes place by replacing the Whistleblowers' Authority Act with the new Whistleblower Protection Act. With the introduction of the new Whistleblower Protection Act, certain smaller organizations may also be required to have a

⁵ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

reporting procedure, in particular companies that fall under the Money Laundering and Terrorist Financing Prevention Act (WWFT). The EU Whistleblowers Directive also sets a number of additional requirements for reporting procedures and provides broader protection for a wider group of people. We will briefly summarize the most important elements of the new law in the following paragraph.

The law relates to reports of (suspected) breaches of Union law and wrongdoings and is intended for people with a current, former or future working relationship with the organization.⁶ Reporters, but also those who assist them, not be disadvantaged or retaliated against.⁷ Organizations must have an *internal* reporting procedure⁸, but employees can also report directly to competent *external* authorities⁹. If there is no authority competent for a specific matter, reporters can contact the Dutch Whistleblowers' Authority. The reporting procedure must provide appropriate guarantees of independence, confidentiality, data protection and secrecy. Furthermore, the organization must inform their employees where they can make their report (in writing, orally or in person). The organization is also bound by response times¹⁰ and employees must be able to consult an adviser in confidence. In addition, all reports must be registered in accordance with the GDPR (General Data Protection Regulation) whereby the identity of the reporter may not be disclosed without his consent. It is important that a reporter is protected as soon as he/she reports to the right channel (internal or external), that he/she is protected against retaliation, and safeguarded from legal proceedings.¹¹

The central question in this article is whether the beforementioned formal laws and regulations offer a guarantee of well-functioning reporting procedures and successful reporting processes? Based on insights from the literature and research, we believe that this is not the case. In section

⁶ This includes in any event employees, civil servants, self-employed persons (e.g. consultants, freelancers, contractors, suppliers), shareholders and directors, volunteers and paid or unpaid trainees, staff of contractors and suppliers, former employees and other persons whose employment relationship has ended, applicants and other persons whose employment relationship has yet to begin.

⁷ This could be colleagues, confidants, lawyers, trade union representatives or family members. The protection also applies to involved third parties, i.e., colleagues or family members who are connected to the reporter through their work.

⁸ This reporting procedure can also be managed by a third party on behalf of the employer.

⁹ Such as: the Netherlands Authority for Consumers and Markets (ACM), the Netherlands Authority for the Financial Markets (AFM), the Dutch Data Protection Authority (AP), De Nederlandsche Bank, the Health and Youth Care Inspectorate (IGJ), the Dutch Healthcare Authority (NZa) and the Authority for Nuclear Safety and Radiation protection (ANVS).

¹⁰ For example, they must provide the reporter with a confirmation of receipt within 7 calendar days and, within 3 months after that confirmation of receipt, also provide feedback on what will happen with the report.

¹¹ This indemnification applies, for example, if the reporter breaks copyrights or the confidentiality clause in order to make a report.

three, for example, we argue that informal measures (focused on organizational culture and behaviour) are relevant to the operation of formal reporting procedures. In section four, we then state that reporting procedures works more effectively when they make part of an integrated compliance or integrity approach. Finally, section five presents the results of recent scientific research that addresses the question of which aspects influence the successful course of internal reporting processes.

3. Soft controls as preconditions for well-functioning reporting procedures

Controls can be defined as measures to influence behaviour.¹² Hard controls are formal, direct and explicit measures within the organization. Soft controls are informal measures that consist of the shared perceptions and experiences regarding the culture and climate within the organization and that influence the behaviour of those involved. Soft controls can both amplify and undermine the effect of hard controls.

With regard to the reporting procedure, this means the following. The reporting procedure is a formal (hard control) measure, but its effect is determined by soft controls. Kaptein (1998; 2008) distinguishes seven soft controls. Applied to reporting procedures, these seven controls read as follows:

1 *Clarity.* Is it sufficiently clear within the entire organization which conduct qualifies as a wrongdoing and how this can be reported? A reporting procedure is an important instrument (hard control), but it is about whether managers and employees experience sufficient clarity about what constitutes a wrongdoing or an integrity violation and how this can best be reported. A reporting procedure that is unclear in structure or wording does not provide the necessary guidance.

2 *Exemplary behaviour.* Do (top-)managers set a good example with regard to ethics, integrity, and compliance (un)desired behaviour? If the organization has made clear what behaviour is expected, but if the organization condones contrary behaviour, then inconsistent

¹² This section is largely based on Vink and Kaptein (2008)

standards are being communicated. Role models are an important source of desired and undesired behaviour and therefore also for the occurrence and reporting of integrity violations and abuses.

3 *Practicality.* Do managers and employees experience sufficient scope to act with integrity and to report wrongdoings. Managers and employees must be enabled by the organization to act in accordance with the determined standards of conduct: for example, do they have sufficient time, resources and knowledge? Without room for responsible behaviour, for example due to great financial or social pressure, integrity violations and abuses are lurking and reporting them is hindered.

4 *Engagement.* Are managers and employees sufficiently motivated to act with integrity and to report any wrongdoing? The extent to which managers and employees feel connected to the current standards and policies influences their behaviour. Commitment increases the willingness to report, while disengagement increases the chance that employees will look the other way ('organizational silence').

5 *Transparency.* Do managers and employees have sufficient insight into each other's behaviour and into integrity violations and wrongdoings that may occur? Perceived safety, openness, transparency, and the willingness to report wrongdoings influence the detection of (un)desirable behaviour.

6 *Discussable.* Are dilemmas for managers and employees sufficiently discussable and are those involved also held accountable for their behaviour? Precisely because there are gray areas within an organization, managers and employees should be able to discuss dilemmas. It is also desirable that persons are held accountable for alleged integrity violations and wrongdoings.

7 *Enforcement.* Are offenders punished, are people valued for desired behaviour and are there lessons learned from mistakes and transgressions? The organization must be prepared to act with integrity and to sanction misconduct. Sanctions influence behaviour and are also a confirmation of the norm. It is important that organizations learn from wrongdoings, so that the chance of repeating undesirable behaviour is reduced.

The seven soft-controls influence the of the well-functioning procedure. In a positive sense, this means that the more these aspects are developed within an organization, the more effective the reporting procedure will be. The other side of the story, however, is that the effectiveness of the reporting procedure decreases as these soft controls are less well developed or absent. This leads to the conclusion that having a (formal) reporting procedure is important, but that its effect is determined by a set of (informal) preconditions, thus having a reporting system is not sufficient for a successful reporting process.

Thinking about hard and soft controls is incidentally reflected in the work of various authors, who use related terminology. Aardema, for example, in his inaugural lecture, talks about 'silent values'.¹³ Silent values contrast with formal norms such as rules, codes and systems (top-down) imposed, aimed at guiding and controlling behaviour within organizations. Silent values, refer to something deeper, and represent unspoken, implicit, and unconscious motives, feelings, interests, and preferences. They refer to the organization's informal culture: the invisible part of the proverbial iceberg that is below the water surface.

Van Es makes a similar distinction and talks about the upper and lower streams in organizations.¹⁴ The upper-stream is conscious, rational, directive, and uses a systematic strategy for which concrete instruments are deployed. The under-stream is unconscious, emotional, associative, subjective, and fueled by human needs and desires. And so do Hoekstra and Kaptein distinguish between formal and informal strategies to institutionalize integrity.¹⁵ Formal strategies are based on a documented action plan that is executed by using concrete tools to strengthen organizational integrity. Informal strategies, on the other hand, are less visible, unconscious, and not specifically aimed at strengthening organizational integrity. This includes: inspiring organizational values; fair assessment and remuneration procedures; rewarding good behaviour; and promoting professional responsibility.

¹³ Aardema, H. (2005). *Silent values. A Reflection on Overnorming in Public Management*. Heerlen: Open University.

¹⁴ Van Es, R. (2011). *Professional Ethics. Moral decision-making in organizations and professions*. Deventer: Kluwer.

¹⁵ Hoekstra, A. & Kaptein, M. (2013). The institutionalization of integrity in local government. *Public Integrity*, 15(1), 5-27.

4. Embedding as a precondition for well-functioning reporting procedures

Policies or programs aimed at fostering integrity and compliance consist of a wide range of measures. This includes screening of new employees, codes of conduct, training courses, regulations, procedures, risk analyses and confidential advisers. Reporting procedures, which indicate how employees can correctly raise suspicions of integrity violations or other wrongdoings, are also an important aspect of an organization's integrity policies. After all, the early identification and addressing of potential problems gives the organization the opportunity to take swift action and rectify these problems, so that the damage can often be limited.

Scientific insights indicate that integrity measures should not be introduced as individual 'stand-alone' measures.¹⁶ An integrated integrity approach in which there is cohesion between the various types of measures is much more effective due to synergy benefits.¹⁷ This implies that the effectiveness of the reporting procedure increases when it makes part of an integrated integrity management approach. To concretize this, we use the 'Integrity Infrastructure'; an integrity model consisting of seven core elements, which also includes the reporting procedure.¹⁸

Seven core elements of the Integrity infrastructure	
1. Leadership & Strategy	Integrity is increasingly seen as a core value for public and private organizations. However, integrity policy can only succeed if (top) management considers it an important subject, visibly supports it, sets a good example, is prepared to allocate sufficient resources for it and also formulates a clear vision on integrity and integrity management. Involvement and support are important to prevent integrity policies from getting bogged down in all sorts of loose initiatives that will have little or no effect in the organization.
2. Values & standards	Values and norms are both written and unwritten organizational rules which are often formalized in the code of conduct. They provide guidance for what the organization,

¹⁶Hoekstra, A. (2022). Integrity management in public organizations: Content & Design. Erasmus University Rotterdam. <https://alainhoekstra.nl/publicaties/integrity-management-in-public-organizations-content-design/>

¹⁷ See for example: Hoekstra, A. & Kaptein, M. (2019). Managing Ethics & Compliance: A Multiple and Dynamic Perspective. *Journal of Compliance* . No.3, pp. 157-163. And: Hoekstra, A. Huberts, L., & Van Montfort, A. (2022). Content and Design of Integrity Systems: Evaluating Integrity Systems in Local Government, *Public Integrity* , DOI: [10.1080/10999922.2021.2014204](https://doi.org/10.1080/10999922.2021.2014204)

¹⁸ For a more extensive reflection on the Integrity Infrastructure, see: https://www.huisvoorklokkenluiders.nl/Publicaties/publicaties/2022/05/02/dwa_integrity-management-and-the-integrity-manager

	management, and employees stand for and can be held accountable for. If the values and norms of the organization are not clearly formulated and known, this could lead to confusion among employees about the desired attitude and behaviour. Values and norms are not optional, but offer direction for difficult moments and form the basis for the integrity policy and its enforcement.
<i>3. Rules & Procedures</i>	Formal rules and procedures concretize and support the organizational values and standards. Lack of presence or familiarity with rules, procedures, and control systems can lead to arbitrariness and subjectivity. This presents employees with unnecessary risks and temptations. Rules and procedures are an important part of the integrity system and reduce the risk of integrity violations.
<i>4. Personnel & culture</i>	It is important for an organization to select the employees who fit in well with the organizational culture and the associated integrity expectations. Attention to integrity is therefore an important part of the recruitment and selection process and of personnel policies. Insufficient care for the ethical climate and organizational culture can lead to undesirable group behaviour and reduced ethical awareness, which increases the risk of wrong decisions and integrity violations.
<i>5. Reporting & enforcement</i>	Things go wrong in every organization. Organizations must therefore be prepared for incidents and reports of wrongdoing. Reporting procedures and confidential advisers support employees so that they can raise reports adequately. Enforcement (initiating investigations and imposing sanctions) is not only necessary to put an end to observed violations of standards, it also enforces existing standards and reduces the risk of future violations.
<i>6. Communication & accountability</i>	Communication contributes to the awareness of the integrity policy among employees and emphasizes the importance that the organization attaches to integrity. Regular communication is a precondition for a well-functioning integrity policies. The progress of the integrity policies must be accounted for. This not only keeps it on the agenda, but also gives management insight into the implementation and operation of the integrity measures and to what extent these require improvement. Accountability reports are forms of management information and enhance the learning capacity of the organization. Organizations are also increasingly expected to report externally about the implementation of their integrity policies.
<i>7. Planning & coordination</i>	Integrity promotion deserves permanent care and attention and benefits from an integrated approach that coordinates the various integrity instruments and activities so that they can reinforce each other. The appointment of an integrity manager or coordinator is important to keep the theme of integrity on the agenda, to create cohesion, to monitor progress, and to regularly update the policies and measures. Establishing and recording the integrity ambitions, goals and measures in an integrity plan helps the integrity manager to stay on course.

Table 1: Infrastructure Integrity

The reporting procedure is part of the Reporting & Enforcement core element and is important because things can always go wrong within organizations and a well-thought-out procedure must therefore be in place to raise concerns and deal with reports. But for the procedure to work properly, it must also be supported by the other core elements. Without being exhaustive, this means, for example, that:

- the management of the organization not only ensures the development and implementation of a good reporting procedure, but also actively encourages employees to report integrity violations or abuses (core element 1);
- the organization's code of conduct pays explicit attention to the importance of reporting, the existence of a reporting procedure and the contact details of the confidential advisers (core element 2);
- the importance of reporting and the existence of the reporting procedure (and confidential advisers) are part of the information package and the introductory course for new employees. Attention is also paid to this in integrity workshops, training courses and modules. Work meetings and staff interviews are also suitable moments to occasionally raise this subject (core element 4);
- the reporting procedure is regularly evaluated and management is periodically informed about the nature and scope of the reports. This enables the organization to improve the functioning of the reporting procedure if necessary, and to tighten up the integrity policies in order to prevent future reports (key elements 6 and 7);

5. Preconditions for successful reporting processes

Although many organizations have a reporting procedure, it appears that employees do not always use it. Moreover, a well-functioning reporting system requires that there is an open culture in the organization, that employees do not experience any barriers to reporting, that there is confidence that the reports will be taken seriously, and that it is visible what is done with the reports. The paradox is that if an organization realizes this, it no longer needs a formal reporting system because then everything can be discussed in confidence and openness, without fear of reprisals.

The recent regulations for better protection of whistleblowers indicate the legal requirements for a reporting procedure. But the formal structures do not guarantee a successful reporting process. That is why the Whistleblowers' Authority commissioned Utrecht University in 2022 to conduct research into the elements that play a role in the successful course of a reporting process.¹⁹ This (case-study) research indicates that transparency, reliability, communication and learning skills are crucial for the successful operation of reporting processes.

5.1 Transparency

It takes confidence for employees to take the step to report wrongdoings and certainly transparency increases confidence. Transparency provides clarity to potential reporters about: the kind of wrongdoings that can be reported; where or to whom can be reported; which organizational actors will be involved; what the further course of the reporting process is; when the reporter receives feedback (but also about what information cannot be shared); and which follow-up actions the organization links to the outcome of the investigation into the report. Transparency and clear communication contribute to confidence in the reporting system and lower the so-called reporting threshold.

5.2 Reliability

The confidence that a reporter has in the reporting system is related to his expectations and to previous (positive or negative) experiences of himself or of colleagues. Reliability also depends on the professionalism of the organizational actors that are handling the report and on the interaction with the reporter in this process. A personal approach appears to be important here. Both verbal and non-verbal communication must express that the reporter is really listened to and that his raised concerns are taken seriously. Empathy and humanity are crucial. Because a lot of skills are involved, the organization must ensure that the reliability of the (integrity) actors is safeguarded by investing in their knowledge, competences, skills and attitude. Together, this should ensure a balance of expertise and empathy, with an eye for the interests of all involved actors.

¹⁹ <https://www.huisvoorklokkenuiders.nl/integriteit-bevorderen/succesvol-melden>

5.3 Clear communication

Clear communication is extremely important for both transparency and reliability. This applies not only to communication with the reporter, but also with the other actors involved. It must be clear from the start which information can and must be shared and which information cannot be shared (and why). Good coordination across the lines of communication helps the actors involved to fulfill their role in the reporting process, leads to better (unambiguous) information, increases confidence in the reporting process, makes the reporter feel recognized which increases the support for the ultimate outcomes.

5.4 Learning skills

Organizations can improve their internal reporting process by monitoring and evaluating this process. This learning process involves two levels. The first level consists of improvements in the reporting process. The second level, consists of improvements in the functioning of the organization, for example in the business processes or in the organizational culture. Perhaps very tight deadlines had been set, pushing employees to meet those deadlines at all costs, and integrity risks arose as a result. Learning lessons at these two levels not only benefits the course of the reporting process, but also helps to prevent incidents in the future.

In summary, the well-functioning of an internal reporting procedure depends on a set of conditions. Transparency, reliability and clear communication are very important. The reporter must feel heard and taken seriously and experience the process as fair (both interpersonally and in the procedure). In addition, social and psychological safety is an absolute condition for making reporting processes work. It is also important to evaluate the reporting process and its outcomes continuously; this not only contributes to better reporting processes and systems but also helps to avoid future integrity violations and wrongdoings.

6. Conclusions

Improving the protection of reporters is high on the political and legislative agenda today. It is important that there is a legal basis that compels organizations to work on a sound internal reporting structure. The European Whistleblower Directive and the European Directive Corporate Sustainability Reporting Directive (CSRD) indicate what organizations must formally have in place. These directives do however not indicate how to exactly implement these requirements. Which is also impossible because a reporting system must fit in well with the culture and integrity infrastructure of the organization and that requires customization.

Literature and research show that mere compliance with the legal requirements is not sufficient to achieve a well-functioning reporting system and successful reporting processes. For this, a number of preconditions must be met. For example, it is clear that a reporting system is an element of a broader integrity approach, in which all elements are equally important, complement each other and reinforce each other.

The literature also distinguishes between soft and hard controls, or informal and formal elements of an integrity approach. This terminology is somewhat misleading because the soft controls or informal elements are just as important and necessary as the so-called hard controls or formal elements. Research indicates that those involved in a reporting process experience the reporting process as successful if action is taken quickly and professionally, if empathy and humanity are shown, if there is good coordination and clear communication with those involved, and that it is clear where and how to report and what the further course of the reporting process will be. To this end, organizations must invest in the knowledge, skills and attitude of the actors (e.g. the investigators). In addition, organizations can learn from reports and reporting processes to improve the process, but also to make improvements to the culture, processes and systems of the organization - which also increases confidence in the reporting process.

Thus, the success of reporting procedures lies in the combination of so-called hard and soft controls within an integrated integrity approach, where organizations both invest in their actors and learn lessons from the reports they receive and the reporting processes that are completed. This continuous cycle not only benefits employees and the organization, but also contributes to a safer and more ethical society.