

WHISTLEBLOWING FRAMEWORKS



**ASSESSING DUTCH
PUBLICLY LISTED COMPANIES**

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Transparency International Nederland is the Dutch Chapter of Transparency International. Transparency International Netherlands works with government, business and civil society to put effective measures in place to tackle corruption and promote integrity. This includes lobbying for better legislation to protect those who speak up against wrongdoings such as corruption and fraud.

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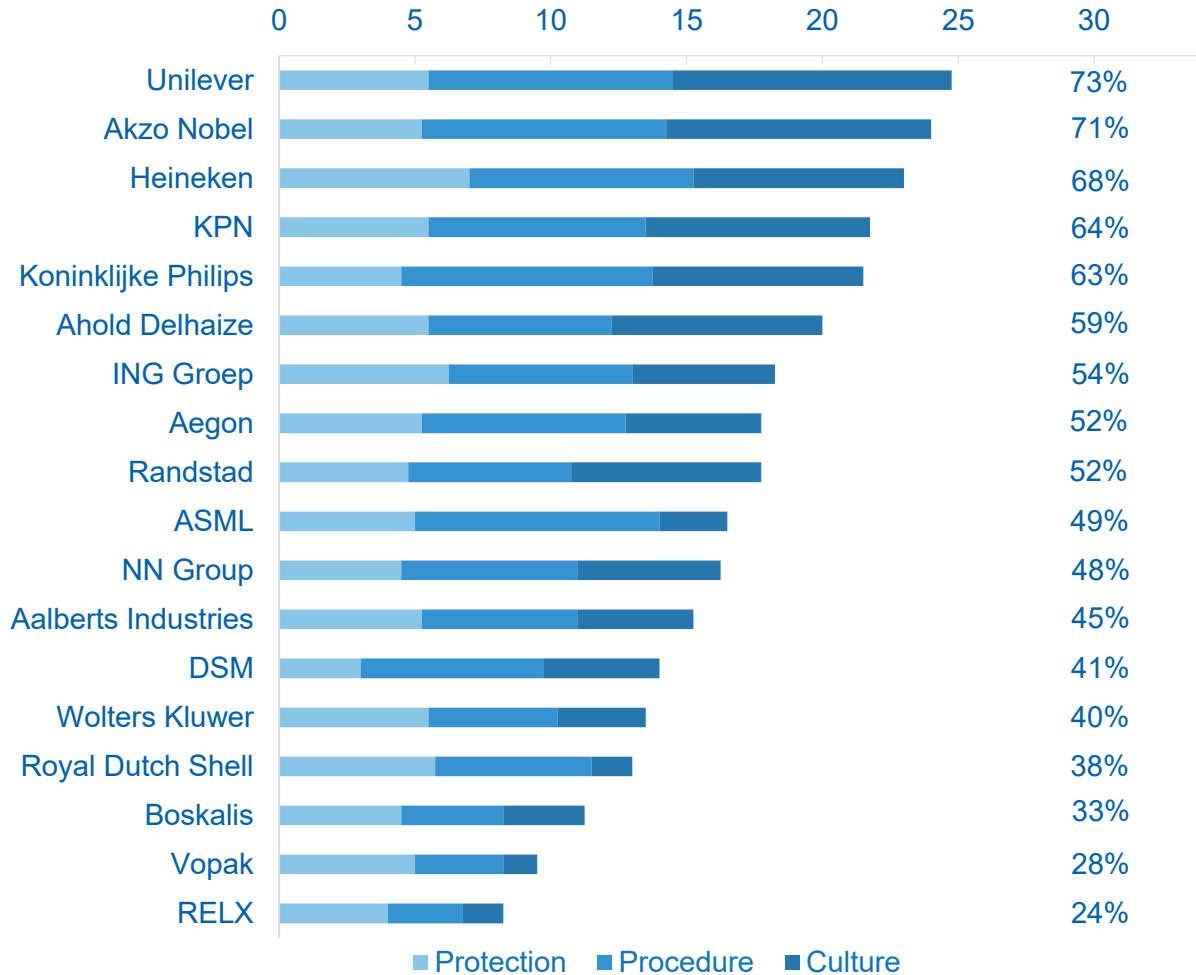
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TABLE OF CONTENTS

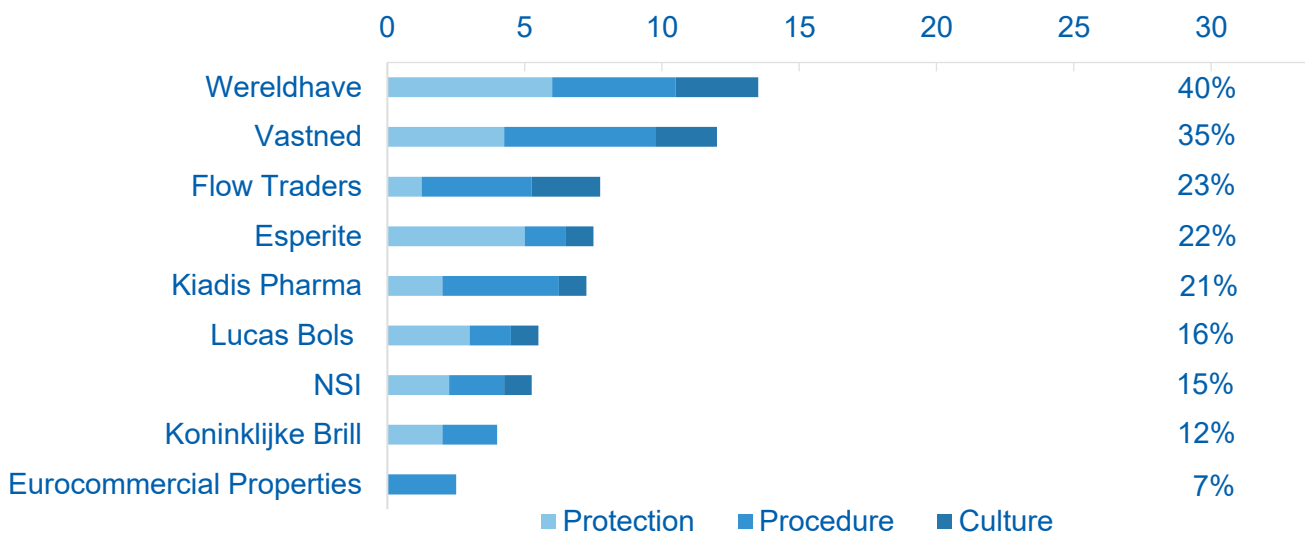
INDEX RESULTS	4
INTRODUCTION	5
MAIN FINDINGS	10
RECOMMENDATIONS	11
METHODOLOGY	15
PROTECTION	21
PROCEDURE	25
CULTURE	29
THE BUSINESS CASE FOR COMPANIES	34
The benefits of an effective whistleblowing framework.....	34
What does a strong internal reporting framework look like?	36
Elements of an effective whistleblowing framework.....	37
APPENDICES	38
I. Methodology – extended	38
II. Desk research references	42
III. Questionnaire	44

INDEX RESULTS

Large Companies Overall Ranking of Whistleblowing Frameworks



Small and Medium Sized Companies (SMEs) Overall Ranking of Whistleblowing Frameworks



INTRODUCTION

“What is the current state of whistleblowing protection among Dutch publicly listed companies?”

Transparency International (TI) defines corruption as “the abuse of entrusted power for private gain”. As an organisation, we work around the globe against corruption in all its forms.¹ Corruption is a widespread phenomenon in international business, including in the world of trade and investment. As a practice, corruption raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions.

It is a sad fact that corruption often goes unchallenged when people do not speak out against it. That is why whistleblowers are so invaluable in exposing corruption, fraud and mismanagement – and adequate reporting mechanisms are powerful tools in the fight against these practices. According to the Global Fraud Study of the Associations of Certified Fraud Examiners (ACFE), the most common detection method of fraud was via the reporting of whistleblowers (39.1 per cent of cases).² Early disclosure of any suspicions of wrongdoing can preserve the rule of law, detect and remedy wrongdoing and prevent further damages from occurring.

TI defines whistleblowing as “the disclosure or reporting of wrongdoing, which includes corruption, criminal offences, breaches of legal obligation, miscarriages of justice, specific dangers to public health, safety or the environment, abuse of authority, unauthorised use of public funds or property, gross waste or mismanagement, conflict of interest, and acts to cover up any of the aforementioned.”³

Unfortunately, blowing the whistle often carries a high personal risk – particularly when there is little legal protection against reprisal such as dismissal, unfair treatment, humiliation, intimidation or even physical abuse. Whether or not in the influence sphere of companies, monitoring of information; libel and defamation laws; and inadequate investigation of whistleblowers' claims, can all deter people from speaking out. Whistleblowers are less likely to report workplace misconduct when their employers do not provide clear and safe internal reporting channels.⁴ And in some settings, whistleblowing carries connotations of betrayal rather than being seen as a benefit to the company and the public at large. Ultimately, societies, institutions and citizens lose out when there is no one willing to speak up and unmask wrongdoing such as corruption.

Therefore, safeguards to protect and encourage people who are willing to take the risk of speaking out about corruption are vitally important. Transparency International Nederland (TI-NL) works with the public and private sector in the Netherlands to introduce comprehensive whistleblower protection to

¹ See: <http://www.transparency.org/whatwedo> [<last visited accessed 2 August 2017].

² ACFE, *Global Fraud Study. Report to the Nations on Occupational Fraud and Abuse*, (2016). Available at: www.acfe.com/rtn2016/docs/2016-report-to-the-nations.pdf [accessed 19 October 2017].

³ Transparency International, *Whistleblowing in Europe*, (2013). Available at: www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu [accessed 2 August 2017].

⁴ Berenschot, *Veilig misstanden melden op het werk*, (2014). Available at <https://huisvoorklokkenluiders.nl/wp-content/uploads/2017/02/20140805-veilig-misstanden-melden-op-het-werk-eindrapport-2014.pdf>.

those who speak up and ensure that their claims are properly investigated. Having an effective whistleblowing framework in place is essential to stimulate the reporting of corruption, misconduct and fraud.⁵ All companies, public bodies and non-profit organisations should introduce safe, clear and understandable procedures for internal reporting.⁶ Staff members are the eyes and ears of any organisation, and whistleblowing frameworks are a vital component of good governance and risk management.⁷

An effective whistleblowing framework empowers staff to speak out against legal or ethical misconduct. Clear procedures for whistleblowing help to protect companies from the effects of misconduct, including legal liability, serious financial losses and lasting reputational harm. Effective whistleblowing frameworks also foster a corporate culture of trust and responsiveness. A former report of TI-NL on *Transparency in Corporate Reporting* (TRAC 2016) found that all assessed companies had a whistleblowing procedure in place.⁸ But are these procedures effective? Are they fully embedded within the organisation as part of a broader whistleblowing framework? And what does an effective whistleblowing framework look like? This particular study aims to take a closer look at the whistleblowing frameworks of 27 Dutch publicly listed companies (18 large companies and 9 small- and medium-sized enterprises – SMEs), and whether they contain the necessary elements to be effective.

To be effective, a whistleblowing framework should:

- have accessible and reliable channels to report wrongdoing and to encourage whistleblowers to report wrongdoing internally;
- offer robust protection from all forms of retaliation, and
- contain mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies, and prevent future wrongdoing.⁹

The stimulation of open communication, in general, leads to higher employee satisfaction and eventually to higher productivity.¹⁰ In this context, an effective whistleblowing framework enables the organisation to start “detering malpractice and moves to a self-governing organisation”.¹¹ Companies have found

⁵ OECD CleanGovBiz, *Whistleblower protection: encouraging reporting*, (2012). Available at: www.oecd.org/cleangovbiz/toolkit/whistleblowerprotection.htm [accessed 2 August 2017].

⁶ See: <https://www.transparency.org/topic/detail/whistleblowing> [accessed 15 August 2017].

⁷ CIPFA Whistleblowing E-learning, (2017). Available at: <http://www.cipfa.org/services/counter-fraud-centre/e-learning/whistleblowing-elearning?crdm=0>.

⁸ See www.transparency.nl/wp-content/uploads/2016/10/TRAC-report-Transparency-International-Nederland-2016.pdf.

⁹ Transparency International, *International Principles for Whistleblower Legislation*, (2013). Available at: www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation [accessed 19 October 2017].

¹⁰ D. Hassell, *Open Communication: Vital to Business Success* (AMA, 2016). Available at: www.amanet.org/training/articles/Open-Communication-Vital-to-Business-Success.aspx [accessed 2 August 2017].

¹¹ F. West, “Why an effective whistleblowing policy is important for charities”, *The Guardian*, 14 November 2012. Available at: www.theguardian.com/voluntary-sector-network/2012/nov/14/whistleblowing-important-charities [accessed 15 August 2017].

that these mechanisms provide real benefits to their culture, brand, long-term value creation and growth.¹²

On the other hand, a lack of attention for concerns raised internally by employees can have a negative impact on companies. When companies face public, external disclosure of concerns, their reputation and market value are threatened.¹³ In an economy where 70 to 80 per cent of market value comes from intangible assets such as brand reputation, organisations are especially vulnerable to anything that could potentially harm that reputation.¹⁴ Therefore, managing internal reporting of wrongdoing within the company effectively is critical to protecting the company from performance, financial and reputational risks.¹⁵ Furthermore, research shows that companies that were subjected to whistleblowing have reduced financial fraud in the years following the reporting of the wrongdoing.¹⁶

Businesses need to consider how best to establish their whistleblowing frameworks to ensure they capture any vital intelligence about misconduct known by their employees. A strong culture in which the internal reporting of wrongdoing is embedded, can promote positive business outcomes as well as prevent negative outcomes such as reputational damage. Both are solid reasons for a company to strongly encourage the internal reporting of wrongdoing.

Protection of whistleblowers in the Netherlands

On 1 July 2016, the Dutch government implemented *The Whistleblowers Authority Act*. This law stipulates, among other things, that all companies with more than 50 employees are obliged to implement a whistleblowing procedure. In addition, the law requires that employees who report misconduct should be protected against retaliation.¹⁷

However, the law provides little requirement for the content of a whistleblower procedure (for example, who to report to and the possibility of getting advice).¹⁸ Essentially, having a whistleblowing procedure in place is only one part of an effective whistleblowing framework.

¹² J. de Gramont, *The Business Case for "Speaking Up". How Internal Reporting Mechanisms Strengthen Private-Sector Organisations*, 2017. Available at: www.transparency.org/whatwedo/publication/business_case_for_speaking_up [accessed 20 October 2017].

¹³ J. Warren, *Managing reputational risk from whistleblowing* (Warrenpartners, 2012). Available at: www.warrenpartners.co.uk/blog/post/2012-06-28-managing-reputational-risk-from-whistleblowing [accessed 2 August 2017]. See also J. Brabers et al, *Preadvies 2015; Klokkenluiders in perspectief. Vereniging van Handelsrecht*. 2015. Available at: <http://vereniginghandelsrecht.nl/images/docs/PreadviesVHR2015.pdf> (Dutch only) [accessed 20 October 2017].

¹⁴ Eccles, R., Newquist, S., Schatz, R., *Reputation and its risks* (Harvard Business Review, 2007). Available at: hbr.org/2007/02/reputation-and-its-risks [accessed 2 August 2017].

¹⁵ J. Warren, *Managing reputational risk from whistleblowing* (Warrenpartners, 2012). Available at: www.warrenpartners.co.uk/blog/post/2012-06-28-managing-reputational-risk-from-whistleblowing [accessed 2 August 2017].

¹⁶ J. Wilde, *The Deterrent Effect of Employee Whistleblowing on Firms' Financial Misreporting and Tax Aggressiveness* (Accounting Review, 2016).

¹⁷ See: Whistleblowers Authority Act, Article 2.3 b. Available at <http://wetten.overheid.nl/BWBR0037852/2016-07-01> (Dutch only) [accessed 20 October 2017].

¹⁸ See: www.huisvoorklokkenluiders.nl for more information on requirements for internal procedure [accessed 15 August 2017].

Recent research of the Whistleblowers Authority in the Netherlands (November 2017) among more than 430 works councils of organisations in the private, public and semi-public sector, demonstrates that employers still have to take substantial steps to comply with the Whistleblowers Authority Act. Although 79 percent of the organisations investigated have an international reporting procedure, only 48 percent have drawn up a reporting procedure that meets the new legal requirements. The Whistleblowers Authority foresees this percentage to be even lower in practice, as many small companies do not have a works council and are therefore not included in this research. The estimates of the Whistleblowers Authority are that only three out of ten companies with fewer than 250 employees comply with the rules.¹⁹

By publishing this report, TI-NL aims to increase awareness of the legal obligation to protect whistleblowers in the Dutch private sector and to gain a better understanding of the current quality of whistleblower frameworks among Dutch publicly listed companies.

Structure of this report

The report *Whistleblowing Frameworks: assessing Dutch publicly listed companies* provides answers to the following questions:

1. What is the current state of whistleblowing frameworks among Dutch publicly listed companies?
2. How can Dutch publicly listed companies support and stimulate the internal reporting of wrongdoing?

The report includes a three-pronged approach: assessing the companies' whistleblowing frameworks, a ranking of the whistleblowing frameworks of 27 Dutch publicly listed companies, and recommendations for establishing and improving whistleblowing frameworks.²⁰ Although the legal obligation of having a whistleblowing procedure applies to all companies with more than 50 employees, there are likely to be differences among various companies (depending on their size, for example) concerning the protection that whistleblowing frameworks offer. Previous studies have demonstrated that most small organisations do not have a reporting hotline (only 25.7 per cent do),²¹ while the majority of larger organisations do (74.1 per cent).²² Also, internal audit departments are less likely to exist in smaller organisations than in larger ones,²³ which may have an impact on the availability and analysis of statistics. To assess whether there are notable differences between large companies and small- and medium-sized enterprises (SMEs), both company groups are included in this study.

¹⁹ Huis voor Klokkenluiders, *Meldprocedures en integriteitsvoorzieningen bij werkgevers in Nederland*, 2017. Available at: <https://huisvoorklokkenluiders.nl/wp-content/uploads/2017/11/Verkenning-Meldprocedures-en-integriteitsvoorzieningen-2017.pdf>

²⁰ See 'Methodology' below for the selection criteria for companies.

²¹ ACFE, *Global Fraud Study. Report to the Nations on Occupational Fraud and Abuse*, 2016, p.22. Available at: www.acfe.com/rtnn2016/docs/2016-report-to-the-nations.pdf [accessed 19 October 2017].

²² *Ibid.*

²³ *Ibid.*

To ensure the effectiveness of whistleblowing frameworks, we have chosen three dimensions for further analysis:

1. the level of **protection** given to people reporting wrongdoing internally;
2. the effectiveness of the internal reporting **procedure**;
3. the key importance of a corporate **culture** that supports internal reporting of wrongdoing.

We highlight the fact that the actual performance of the whistleblowing framework may be different from findings through research and publicly available data. For instance, if the possibility of reporting anonymously is offered on paper, it may very well be the case that this is not possible in practice. For example, this may occur when the identifiable facts of a report point to a specific person, or the reporter's identity becomes clear during the course of investigating the report. Furthermore, retaliations may be forbidden in theory, but may not be sanctioned in practice. The recommendations for each of these dimensions supported by the results of the evaluation of Dutch publicly listed companies can be found in the different sections of this report. Further explanation of the approach is offered in the methodology section.

MAIN FINDINGS

Overall Index Result

The average total scores laid out in this section are partially based on survey data from the 16 responsive companies and partly constructed by publicly available data from the 11 non-responsive companies (outlined in Table 1). It is important to understand that the actual performance of the whistleblowing framework may differ from what can be found through publicly available data.

Average score large companies: 50%

Average score SMEs: 21%

- ◆ Not one company scores 10 out of 10 in any of the dimensions.
- ◆ All companies publish their whistleblowing procedures, but most still lack a trusted whistleblowing framework that offers effective whistleblowing protection.
- ◆ The largest opportunity for improvement lies in the supportiveness of the corporate culture for internal reporting of wrongdoing.

Protection

Average score large companies: 70%

Average score SMEs: 39%

- ◆ All large companies provide the possibility to report anonymously, only a few SMEs offer this possibility. [NB: If possible, this does not necessarily mean anonymity is safeguarded in practice]
- ◆ Most large companies offer the possibility to report retaliation against the whistleblower, most SMEs do not.
- ◆ Only two company receives the full score on protection against retaliation.

Procedure

Average score large companies: 56%

Average score SMEs: 25%

- ◆ Most large companies and one SME provide reporting channels which are available 24/7.
- ◆ Most large companies and SMEs provide the reporter with feedback about his or her report.
- ◆ A few companies hold a clear decision-making process regarding the question whether reports need further investigation.

Culture

Average score large companies: 37%

Average score SMEs: 9%

- ◆ The majority of large companies publish their anonymised whistleblowing statistics externally.
- ◆ Most large companies do not provide a helpline or a confidential advisor for advice in place.

RECOMMENDATIONS

Increase the level of protection given to people reporting wrongdoing internally

- 1** Give reporters of wrongdoing the opportunity to report any form of retaliation. One of the key risks for a reporter associated with reporting wrongdoing is possible retaliation. Therefore, a process for reporting retaliation should be in place: the Dutch law provides for this.
- 2** Ensure and communicate the different ways of protection against retaliation widely to employees. Companies must actively communicate that any form of retaliation against employees who report wrongdoing is forbidden and must actively support and protect staff who report wrongdoing. An effective system for protection against retaliation should include more than one component. A company may have a non-retaliation policy in place that stipulates disciplinary sanctions for retaliators, but full protection should include further action. For example, larger companies could offer the possibility for an employee to change office or working schedule and an independent party could be in place to support the employee after the investigation process.
- 3** Ensure protection of the reporter's identity through all stages of the investigation process. The confidentiality of the reporter should be guaranteed during all stages of the investigation. In cases where the law requires disclosure of the reporter's name, he or she should be asked for approval or at least be informed of this in advance.
- 4** Create the possibility of reporting wrongdoing on an anonymous basis. The elementary form of the reporter's protection is the possibility of reporting anonymously, regardless of the reporting channel. However, anonymity may not be safeguarded if a report can only be traced back to one particular person. Moreover, depending on how anonymity is provided, this may limit further investigation into the wrongdoing (for example, in clarifying the information provided by the reporter), the opportunity to provide protection (you can't protect who you don't know) and the possibility of providing feedback to the reporter.

Increase the effectiveness of the internal reporting procedure

- 1** Create different channels for the reporting of wrongdoing. A comprehensive whistleblowing arrangement should provide employees with a variety of reporting channels, preferably accessible 24 hours a day and 365 days a year, since most of the reports are made during non-business hours. A mixture of different reporting channels (for example, telephone hotline, dedicated email, web-based system, in-person reporting) ensures greater confidence among employees and gives them the possibility of choosing the most appropriate channel for them. The hotline is the most frequently used channel among reporters. To ensure independence and to enhance confidentiality, reporting channels (especially the hotline and web-based system) may be outsourced to a specialised third party provider.

[NB: 24-hour reporting channels may be too demanding for smaller companies. A possible solution may be sought in cooperation with a trade association that could assist SMEs in setting up a reporting channel or that could offer a central confidential advisor.]

2

When possible, provide feedback to reporters throughout all stages of the investigation process.

Reporters of alleged wrongdoing should always be given reference details allowing for further case tracking and communication. They should also be updated about the phase of the investigation process or any issues occurring, such as delays in the process.

3

Install a Case Management System for the recording, investigating and monitoring of reports. A

Case Management System that is compatible with reporting channels allows the company to record and monitor the status of all reports from the time they are made until the time they are resolved. In fact, it prevents a company from overlooking reports and makes it easy to give feedback to reporters about the status of their case.

4

Ensure clearly assigned accountability within all stages of the process. An effective whistleblowing procedure or investigative protocol defines the responsible parties for all stages of the process. Appointing a committee rather than an individual to review each reported issue can help to ensure that all reports are analysed with proper attention and independence.

5

Initially screen reports to assess the relevance and type of wrongdoing. This ensures that all reports are handled by the right department or people. It also ensures effectiveness, as it may shorten the time needed to process the report.

6

Collect and review key statistics of reports on a regular basis. To monitor the efficiency of the whistleblowing process, Key Performance Indicators (KPIs) should be established and measured on a regular basis. Ideally, the company should collect data and create statistics reports as frequently as possible. Most commonly used measurements by large companies are:

- number of reports per reporting channel/employee/department/issue type;
- percentage of reports investigated;
- percentage of reports reported anonymously;
- number of retaliation reports;
- average number of days that cases are pending;
- number/type of substantiated reports; and
- statistics about sanctions.

[NB. SMEs are less likely to be able to collect and review detailed statistics on reports from whistleblowers. Nevertheless, SMEs can collect and review certain key statistics such as the number of reports, the percentage investigated and the average number of days cases are pending.]

Increase goodwill for internal reporting within the corporate culture

In general culture is not found in rules or procedures, but manifests itself in an open, inclusive way of working in which employees can report directly to management, without formalities, and reports are immediately picked up and remedied. Nevertheless, procedures are essential not just to fall back on, but also to create a safe environment for speaking up. Reporters of wrongdoing should be protected not only in word, but also in deed. This practice should be clear within all layers of the company. The following recommendations are proposed:

- 1** Appoint dedicated and experienced senior executives in charge of whistleblowing procedures and the broader integrity framework. Appointing senior management representatives for different functions within whistleblowing procedures (for example, Chief Compliance Officer responsible for the oversight of investigations) indicates the importance of the whistleblowing frameworks in the company as well as the appropriate 'tone at the top'.
- 2** Keep track of statistics on whistleblowing cases and discuss findings regularly at Board level. Top executives in the company should review whistleblowing KPIs on a regular basis. This serves as a basis for decisions on potential changes in the framework and indicates the importance of whistleblowing within the company.
- 3** Review whistleblowing frameworks on a regular basis. Independent and regular monitoring of whistleblowing frameworks (ideally once a year) is required to ensure the appropriateness of the frameworks and their compliance with applicable law.
- 4** Appoint a confidential advisor for advising employees on the reporting of wrongdoing. Ideally, this person (or persons in case of large organisations) should have a senior position within the company to emphasise the importance of whistleblowing and increase awareness of whistleblower protection.
- 5** Arrange regular training for employees on whistleblowing and the broader integrity framework. Training should set out how to raise and report concerns at work and dispel uncertainty around processes and definitions. Employees should undergo mandatory training regarding the integrity frameworks within the company, which includes training on whistleblowing. Furthermore, employees and management responsible for receiving and investigating reports, and interacting with reporters, must receive regular training on legal knowledge and communication.
- 6** Regularly measure the awareness of whistleblowing and broader integrity frameworks among employees, through surveys. It is important to gauge the awareness of the whistleblowing frameworks among employees. This may further indicate to what extent management promotes the importance of protecting potential whistleblowers within the company.
- 7** Send out regular communication to employees about whistleblowing frameworks. Apart from training, employees should receive regular communication about whistleblowing frameworks, for example, via a dedicated intranet section and/or during staff meetings. First-line managers should ensure that all employees are knowledgeable and reminded of the procedures – for

example, employees may be provided with a manual about the whistleblowing framework in the company.

8

Share lessons learned from whistleblowing cases internally with employees. In order to promote a positive message about whistleblowing and to increase awareness among all employees, companies should communicate lessons learned from investigations internally. When publishing information, the company is obliged to ensure that the identity of reporters and any person accused of wrongdoing is protected at all times.

9

Publish anonymised statistics about whistleblowing reports externally. To promote a positive message about whistleblowing and to increase trust in the company at the stakeholder level, companies should publish anonymised statistics about whistleblowing cases externally in their annual report and/or website (for example, number and type of received and investigated reports). When publishing information, the company is obliged to ensure that the identity of reporters and anyone accused of wrongdoing is protected at all times.

METHODOLOGY

Whistleblowing Frameworks: Assessing Dutch Publicly Listed Companies builds on Transparency International's existing work on combating corruption in the private sector. The methodology for this current study has been developed in line with Transparency International's *Transparency in Corporate Reporting* or TRAC-methodology.²⁴ This report provides a tool for assessing whistleblowing frameworks of publicly listed companies, a ranking of the whistleblowing frameworks of 27 Dutch publicly listed companies and recommendations for further improvement.

Structure

To understand the dimensions that define an effective whistleblowing framework, the authors carried out intensive desk research. The resulting findings were validated through interviews with experts on whistleblowing.²⁵ Among the experts were auditors, lawyers who represented whistleblowers, internal legal counsel and chief compliance officers from some of the assessed companies.

Dimensions and sub-dimensions

Through desk research and expert interviews, three dimensions for the evaluation of whistleblowing frameworks were established: protection, procedure and culture. For each of those dimensions, sub-dimensions were created.

The companies were ranked based on the following dimensions and sub-dimensions:

1. The level of protection given to people reporting wrongdoing internally
 - a. Level of anonymity
 - b. Anti-retaliation measures
2. The effectiveness of the internal reporting procedures
 - a. Reporting mechanism
 - b. Response mechanism
 - c. Monitoring
3. The goodwill for internal reporting of wrongdoing embedded in the corporate culture
 - a. Commitment from top management
 - b. Communication

Ranking

Using this structure, 27 Dutch publicly listed companies were evaluated on their whistleblowing frameworks.

²⁴ See www.transparency.nl/wp-content/uploads/2016/10/TRAC-report-Transparency-International-Nederland-2016.pdf.

²⁵ Findings validated by company experts of Phillips & Cohen LLP, Institute of Internal Auditors, UK National Audit Office, Labaton Sucharow LLP, Price Waterhouse Coopers & Capgemini.

Company selection

TI-NL assessed the whistleblowing frameworks of eighteen large multinational Dutch companies listed on the AEX index (NYSE Euronext Amsterdam), and nine small- and medium-sized multinational Dutch companies listed on the AMX index, with a maximum of 250 employees. The companies included have been retrieved from the report *Transparency in Corporate Reporting – assessing publicly listed Dutch companies* (TRAC-study) of TI-NL in 2016,²⁶ minus two large companies (Delta Lloyd and TNT Express), as they were taken over in 2016/2017 and are no longer publicly listed in the Netherlands. The main criteria applied for the company selection in the TRAC-study in 2016 are: international operations, stock exchange listing, and domicile and headquarters in The Netherlands. This set of criteria led to the selection of eighteen large companies listed on the AEX index and nine SMEs from the AMC index with a maximum of 250 employees (FTE).

Data collection

A questionnaire has been created, based on the three evaluation dimensions established in the framework. The questions and answer possibilities are based on existing studies, desk research and expert interviews. All 27 Dutch publicly listed companies were asked to fill out the questionnaire through an online survey platform. The questionnaire was directed to the officers responsible for whistleblowing frameworks within each company.

Establishment of rankings

The 27 Dutch publicly listed companies were ranked on each question by giving a score on a scale from zero to one. Based on this scoring, rankings for all three dimensions of the framework were developed and ultimately, an overall ranking of companies was created.

The full questionnaire, as well as a more detailed explanation of the reasons behind choosing this method of data collection, can be found in the appendices.

Not responding to the questionnaire

Of the 27 Dutch publicly listed companies the questionnaire was sent to, 16 companies filled out the questionnaire. The companies that did not respond were sent a reminder and were reached out to by phone. For those companies that did not respond, research of publicly available information on their whistleblowing frameworks was conducted. The outcome of the questionnaire was sent to all companies (including the non-responsive companies) for review and possible feedback.

Table 1 (p. 17) illustrates the response status of all companies at the time this report was written.

²⁶ See www.transparency.nl/wp-content/uploads/2016/10/TRAC-report-Transparency-International-Nederland-2016.pdf.

Response status of large companies		Response status of small and medium sized companies (SMEs)	
Company	Response	Company	Response
Aalberts Industries	Yes	Esperite	No
Aegon	Yes	Eurocommercial Properties	No
Akzo Nobel	Yes	Flow Traders	Yes
ASML	No	Kiadis Pharma	No
Ahold Delhaize	Yes	Koninklijke Brill	No
Boskalis	Yes	Lucas Bols	No
DSM	No	NSI	No
Heineken	Yes	Wereldhave	No
ING Groep	Yes	Vastned	Yes
Koninklijke Philips	Yes		
KPN	Yes		
NN Group	Yes		
Randstad	Yes		
RELX	Yes		
Royal Dutch Shell	No		
Unilever	Yes		
Wolters Kluwer	Yes		
Vopak	No		

Table 1 – Company response status

1

PROTECTION





97%

Highest
performer:

Heineken

100%

60%

Average

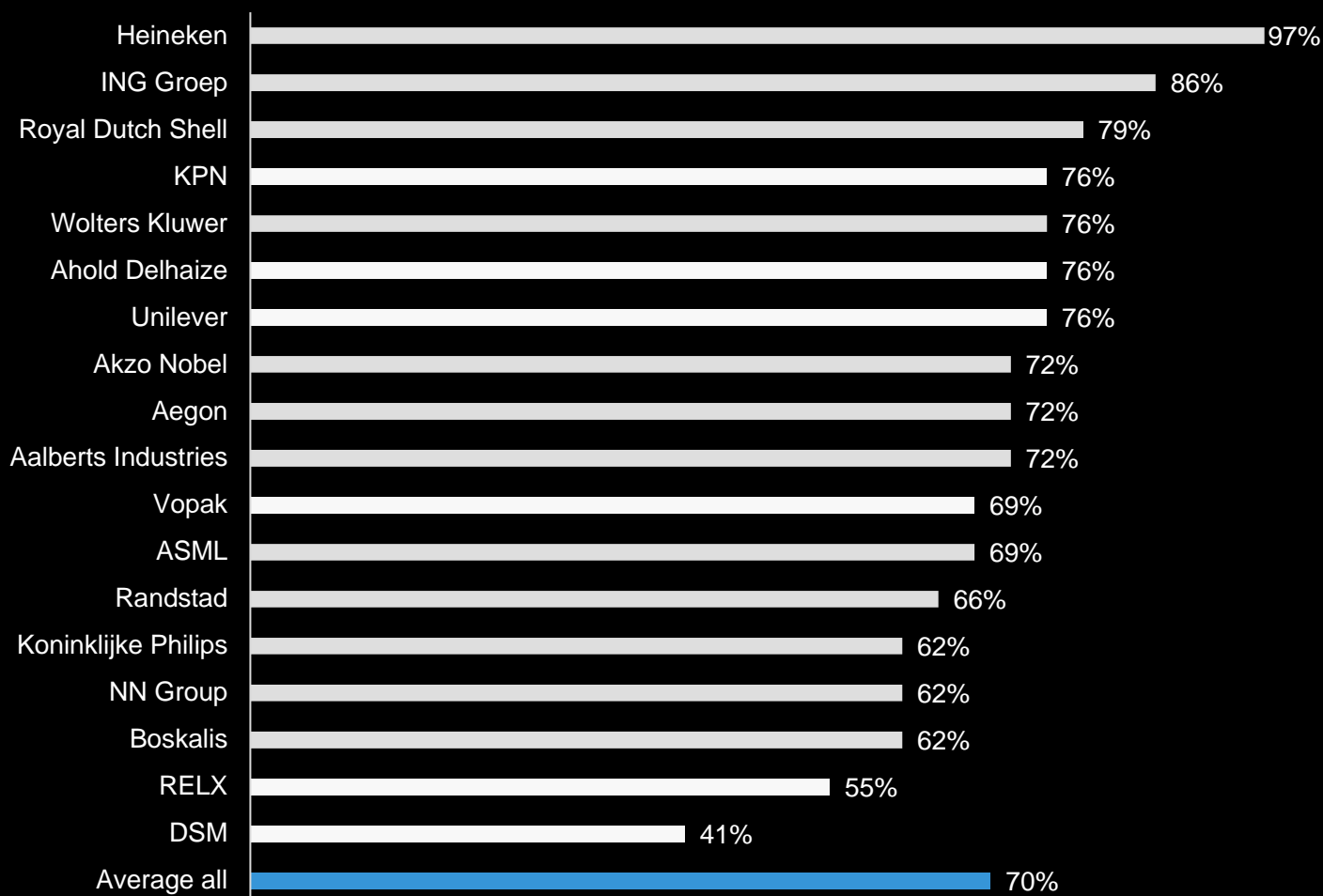
0%

Lowest
performer:

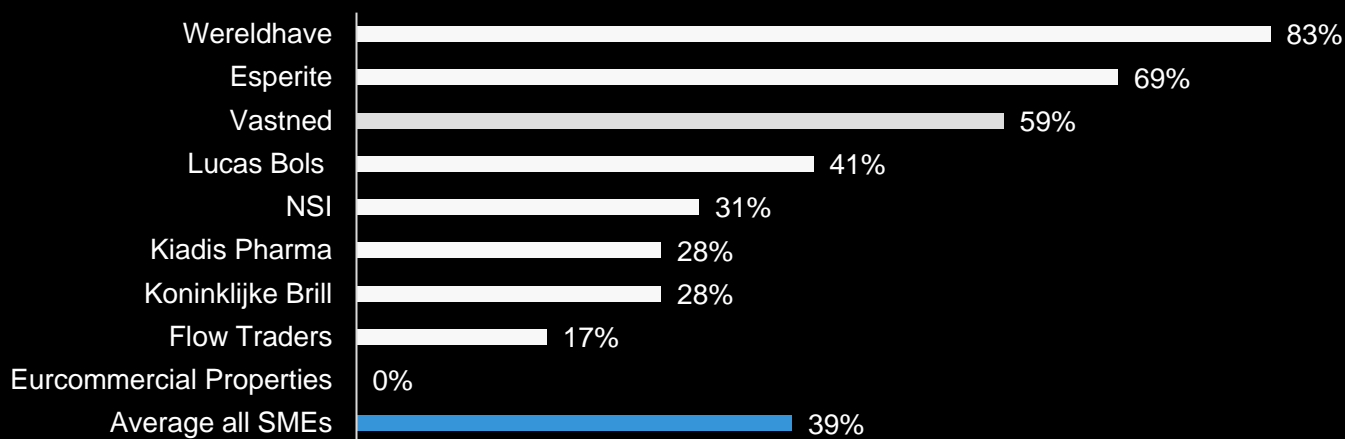
Eurocommercial
Properties

0%

LARGE COMPANIES



SMEs



PROTECTION

The level of formal protection given to people reporting wrongdoing internally – based on the Dutch legal obligation to have a whistleblowing procedure in place – is the first aspect of an effective whistleblowing framework that the authors assessed. If employees who raise concerns internally feel protected, the likelihood they will report their concerns internally and not externally, increases. In this way the employee (or third party) may come forward early in the process, thereby preventing escalating financial or reputational damage to the company. Again, please note that the *actual* protection awarded may differ from the protection presented on paper.

For the purpose of this research, the level of protection was measured by looking at the possibility of raising a concern confidentially or anonymously and the protection against retaliation. However, we believe that this is merely a minimal requirement and does not offer enough protection to employees, nor a sufficient assurance of safety in terms of reporting. A company should go beyond what is required by Dutch law to encourage employees to report wrongdoing. In addition to formal protection in the policy, a good reporting procedure (see Chapter 2) and a supportive company culture (see Chapter 3) are also necessary. Furthermore, anti-retaliation measures should be communicated proactively rather than defensively within organisations.

The evaluation of protection given to people reporting concerns internally is based on five questions, reflected in Tables 2 and 3. Further explanation can be found in Appendices 1 and 3.

Results: Large companies

The average result of large companies in this assessment regarding protection amounts to 70 per cent. The best performing companies are Heineken and ING, both having a score above 85 per cent. RELX and DSM are at the bottom of the ranking with a score of 55 and 41 per cent respectively.

As demonstrated in Table 2, all large companies offer employees the possibility of reporting anonymously and all large companies communicate that retaliation against an employee who reported wrongdoing is forbidden. However, only 15 companies offer employees the possibility of reporting any retaliation they may experience after reporting.

The level of protection given to people reporting concerns internally: Analysis by question (no. of companies)					
Question	>=1 Points	0.75 Points	0.5 Points	0.25 Points	0 Points
Possibility of reporting anonymously	18	0	0	0	0
Managing information about identity	18	0	0	0	0
Possibility of reporting retaliation	15	0	0	0	0
Company states retaliation is forbidden	18	0	0	0	0
Protection against retaliation	1	2	7	4	4

Table 2 – Protection (large companies)

Results: SMEs

The average score of SMEs is 39 per cent. The best performing company here is Wereldhave with a score of 83 per cent. At the bottom of the ranking is Eurocommercial Properties, with a score of zero. This means that, from publicly available data, it became apparent – through their whistleblowing policy and/or the annual reports and other publicly available documents – that no protection to potential whistleblowers is offered.

Of the nine SMEs, six companies do not offer employees the possibility of reporting anonymously. This is often because the only way to report is in person, which makes it impossible to report anonymously. Nevertheless, seven companies state that they will not disclose the identity of the reporter through the investigation process, unless the reporter gives permission to share their identity. Only two SMEs give the option of reporting retaliation. It seems – at least on paper – that SMEs generally offer lower protection against retaliation after reporting than large companies do.

The level of protection given to people reporting concerns internally: Analysis by question (no. of companies)					
Question	>=1 Points	0.75 Points	0.5 Points	0.25 Points	0 Points
Possibility of reporting anonymously	3	0	0	0	6
Managing information about identity	7	0	0	0	2
Possibility of reporting retaliation	2	0	0	0	7
Company states retaliation is forbidden	6	0	0	0	3
Protection against retaliation	1	0	0	3	5

Table 3 – Protection (SMEs)

Comparison between large companies and SMEs

The results show a disparity between SMEs and large corporations in terms of providing protection, mostly when it concerns the possibility of reporting anonymously and reporting retaliation. Large companies scored 70 per cent on average, whereas the average score among SMEs is much lower, namely 39 per cent.

Certain patterns can be identified for SMEs in terms of both positive as well as negative practices. Whereas the possibility of reporting anonymously is often lacking, on paper most SMEs keep the reporter's identity confidential (78 per cent). Furthermore, while most SMEs state that retaliation is forbidden (67 per cent), only two (22 per cent) explicitly offer the possibility of reporting retaliation.

Both large companies and SMEs should continue to work on protection of employees against retaliation. Based on publicly available information, a total of nine companies (33 per cent) offer no protection against retaliation whatsoever, while only two (7 per cent) offer full protection. As the new Whistleblowers Authority Act stipulates that employers should implement safeguards to protect employees against retaliation, only one third of the assessed companies complies with the law.



2

PROCEDURE

100%

74%

Highest
performer:

Koninklijke Philips

46%

Average

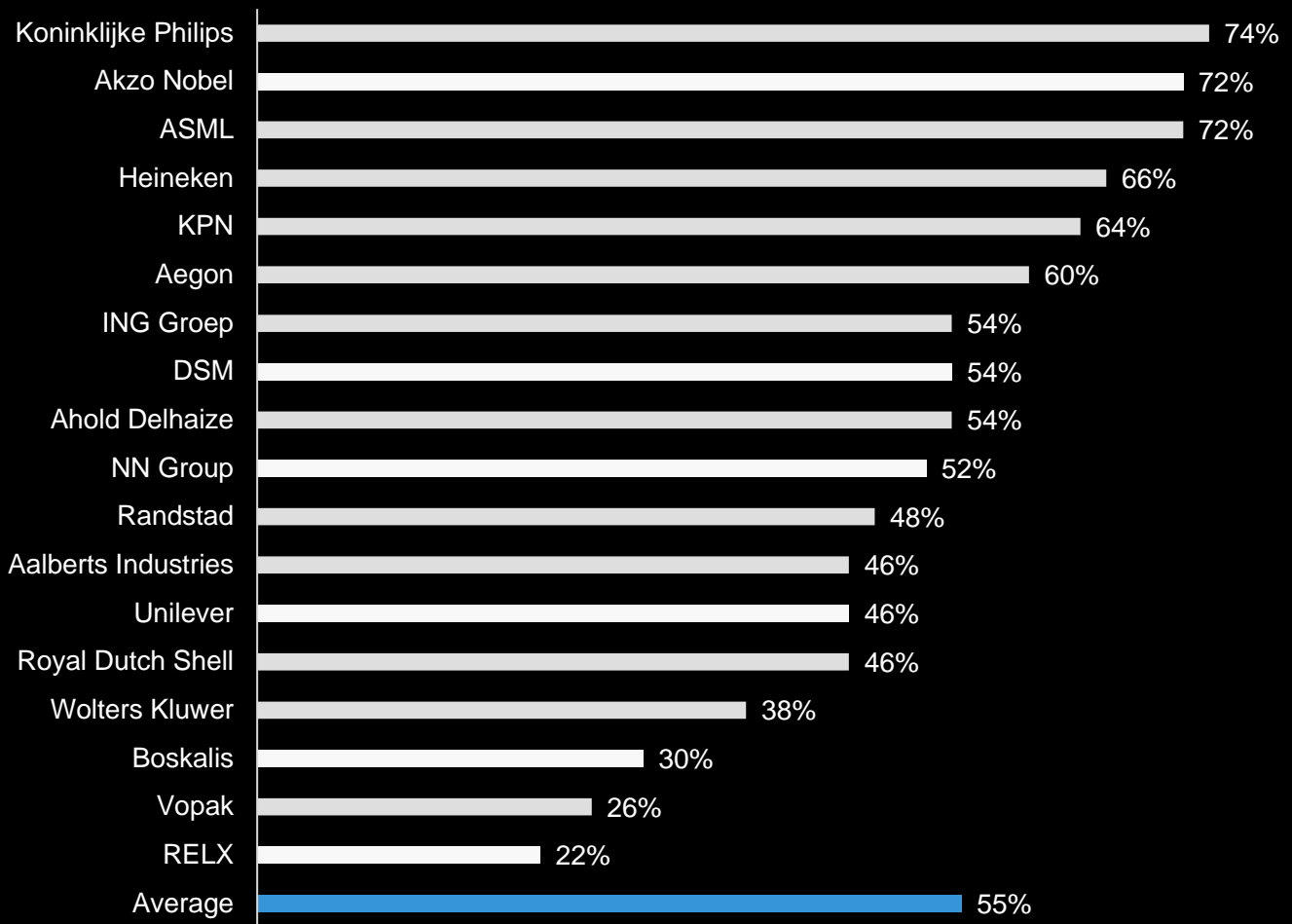
12%

Lowest
performers:

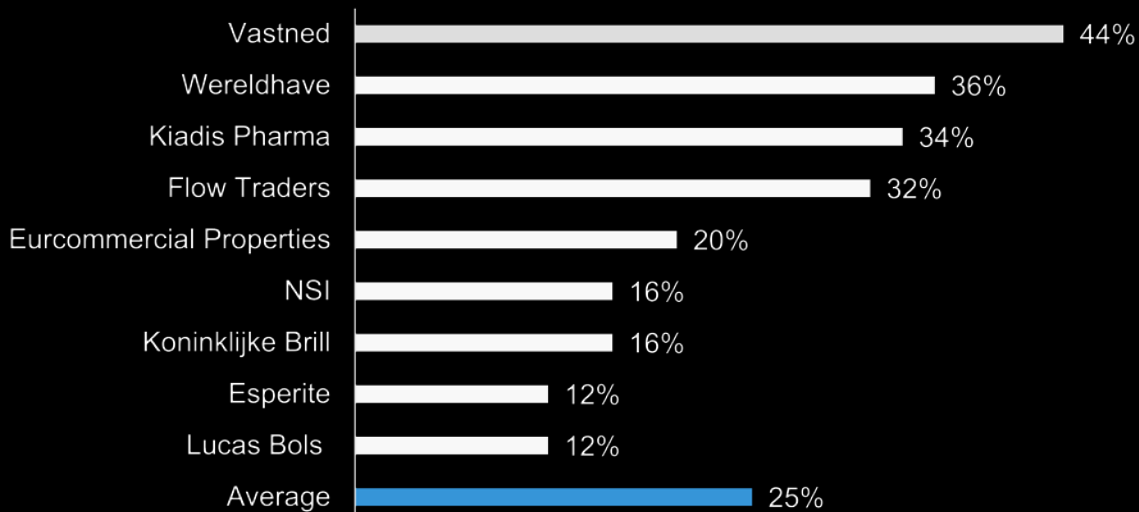
Lucas Bols and
Esperite

0%

LARGE COMPANIES



SMEs



PROCEDURE

The second component of effective whistleblowing frameworks examined for this research is the procedure for reporting and investigating wrongdoing. We have divided the whistleblowing procedure into three crucial sub-components:

1. Reporting mechanism
2. Responding mechanism (process of investigation)
3. Monitoring.

A clear and easy-to-follow procedure is crucial for encouraging employees to report wrongdoing. Employees should be guaranteed a sufficient level of information, security and objectivity throughout all stages of the process. In order to make the procedure effective, responsibilities within all stages of the process need to be assigned. In fact, the process itself requires monitoring, which is the third sub-component of the procedure. In the end, without an efficient whistleblowing procedure in place – even in the most open cultures – whistleblowing frameworks may not prove successful. The formula works both ways: without an open and supportive culture, even the best procedures may prove futile. Culture will be addressed in the following chapter.

The evaluation of the internal procedure for reporting wrongdoing is based on 11 questions, which can be found in Appendix 3.

Results: Large companies

The average score of large companies in terms of the effectiveness of whistleblowing procedures within their organisations, amounts to 56 per cent. The best performing companies in this ranking are Koninklijke Philips with 74 per cent and Akzo Nobel, ASML and Unilever with 72 per cent. At the bottom of the ranking are Vopak and RELX, with respective scores of 26 and 22 per cent.

Most large companies have a reporting channel in place that is accessible 24 hours a day, 7 days a week, 365 days a year. The large companies also score well on the feedback they provide to the reporter about the status of the investigation of their report. In eight large companies, however, there is no initial screening of the incoming reports; and in seven large companies there is no Case Management System in place for recording, investigating or monitoring pending and concluded cases.

The effectiveness of the internal reporting procedure: Analysis by question (no. of companies)					
Question	>=1 Points	0.75 Points	0.5 Points	0.25 Points	0 Points
Available reporting channels	9	4	2	3	0
Availability of reporting channels 24/7/365	16	0	0	0	2
Responsible for governance framework	10	0	7	0	1
Initial screening of reports	10	0	0	0	8
Responsible for deciding further investigation	0	0	9	0	9

Responsible for investigating reports	12	0	5	0	1
Providing feedback on status report	16	0	0	0	2
Case Management System for cases	8	0	3	0	7
Statistics of framework measured	2	4	5	3	4
Frequency measuring statistics	1	0	6	8	3

Table 4 – Procedure (large companies)

Results: SMEs

The average score for SMEs is 25 per cent in the procedure dimension. With a score of 44 per cent, the best performing SME is Vastned. (Vastned is one of the SMEs that filled out the survey, allowing them to add information to that which is publicly available.) With a shared score of 12 per cent, the least performing SMEs are Esperite and Lucas Bols.

The SMEs generally score low on the effectiveness of the procedures around their whistleblowing frameworks. The number of reporting channels and the availability of these channels is rather limited in comparison with the large companies. Furthermore, SMEs score low with regards to screening incoming reports and decision-making around further investigation of reports. This can be partially explained by the differences in the organisational structure of SMEs, the differences in the number of employees and in the lack of resources to set up extensive whistleblowing frameworks.

The effectiveness of the internal reporting procedure: Analysis by question (no. of companies)					
Question	>=1 Points	0.75 Points	0.5 Points	0.25 Points	0 Points
Available reporting channels	0	0	0	2	7
Availability of reporting channels 24/7/365	2	0	0	0	7
Responsible for governance framework	3	0	5	0	1
Initial screening of reports	1	0	0	0	8
Responsible for deciding further investigation	0	0	1	0	8
Responsible for investigating reports	4	0	5	0	0
Providing feedback on status report	8	0	0	0	1
Case Management System for cases	2	0	0	0	7
Statistics of framework measured	0	1	0	1	7
Frequency of measuring statistics	0	0	1	1	7

Table 5 – Procedure (SMEs)

3

CULTURE



100%

72%

Highest
performer:

Unilever

28%

Average

0%

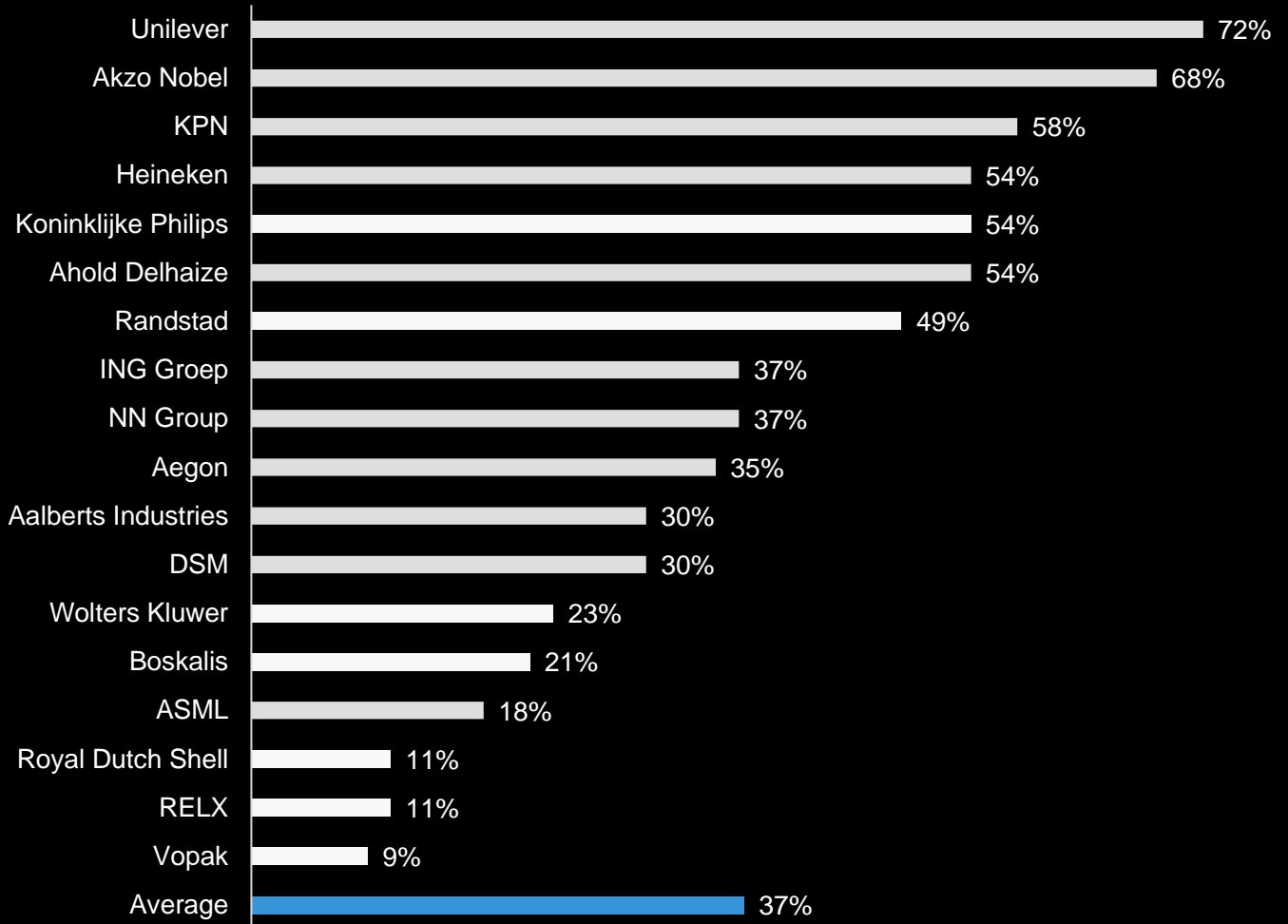
Lowest
performer:

0%

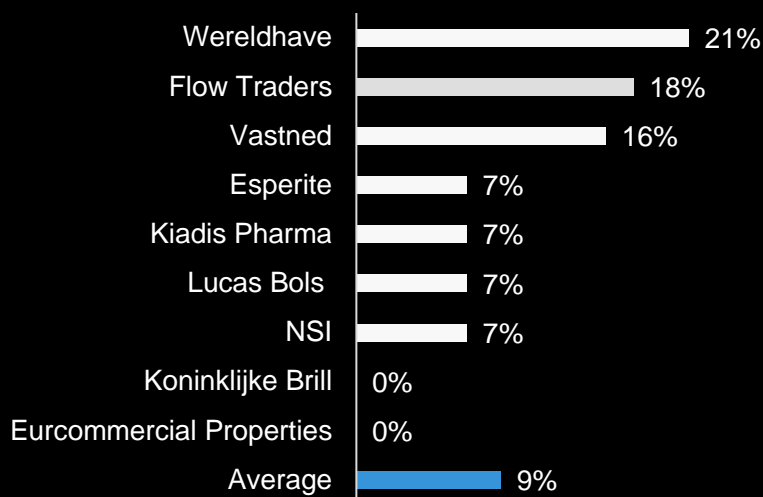
Eurocommercial
Properties



LARGE COMPANIES



SMEs



CULTURE

An often overlooked yet crucial factor, which determines to what extent potential whistleblowers feel safe and comfortable to report wrongdoing internally, is the organisation's corporate culture. Based on the existing whistleblowing frameworks, companies may seem to support and encourage internal reporting of wrongdoing. However, if the company culture does not support the same values, internal reporting of wrongdoing may be suppressed and corruption, fraud and other wrongdoing within the company may remain undetected. Additionally, an open corporate culture and supportive procedures do not only help to detect fraud, they also pave the way for open discussions, higher employee satisfaction, better leadership behaviour²⁷ and, ultimately, influence the financial performance of the company.²⁸

However, the assessment of a company's cultural dimension remains difficult. As scores may only reflect the amount of publicly available data, the representation of the dimension may not be entirely accurate. Nevertheless, certain policies, processes and requirements can have a positive influence on the company's culture. Publishing lessons learned from whistleblowing cases could function as an example of this.

The goodwill towards whistleblowing reflected in the corporate culture was analysed by a set of 12 questions (see Table 6 and 7 and Appendix 3). These questions were retrieved from research conducted by both accountancy firms²⁹ and Transparency International, and further refined with the input from practitioners and experts.

Results: Large companies

The average score of large companies in terms of the extent to which they encourage internal reporting of wrongdoing in their organisation is 37 per cent. With a score of 72 per cent, the best performing large company in this dimension is Unilever. With a score of 9 per cent Vopak finds itself at the bottom.

Large companies generally do not explicitly communicate the outcomes of reported cases internally, but anonymised statistics of whistleblowing reports are published (for example, number of reports by issue type) externally, for example in annual reports. Of the 18 large companies, 11 companies train their

²⁷ Y. Tsai, 'Relationship between Organizational Culture, Leadership Behavior and Job Satisfaction', *BMC Health Serv Res.* 2011; 11: 98.) Available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC3123547/ [accessed 21 September 2017].

²⁸ A. Dizik, 'The Relationship between Corporate Culture and Performance', *The Wall Street Journal*, 2016. Available at: <https://bipublication.com/files/201603202Ebrahim.pdf> [accessed 21 September 2017].

²⁹ PwC, 'Striking a balance: Whistleblowing Arrangement as part of a speak up strategy', 2013, www.pwc.co.uk/fraud-academy/insights/whistleblowing-slides.html; EY, '14th Global Fraud Survey. Corporate misconduct — individual consequences', 2016, www.ey.com/gl/en/services/assurance/fraud-investigation---dispute-services/ey-global-fraud-survey-2016; ACFE, Global Fraud Study. Report to the Nations on Occupational Fraud and Abuse, 2016, www.acfe.com/rtn2016/docs/2016-report-to-the-nations.pdf and TI-S, 'International Principles for Whistleblower Legislation', 2016, www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation.

employees on their whistleblowing framework. Only four companies send out staff surveys to measure awareness and understanding of the framework.

The supportiveness of the corporate culture for internal reporting of wrongdoing: Analysis by question (no. of companies)					
Question	>=1 Points	0.75 Points	0.5 Points	0.25 Points	0 Points
Discussion of reports by Board of Directors	9	1	5	0	3
Internal publishing of outcomes cases (anonymised)	6	0	0	0	12
Channels for publishing outcomes of cases	1	0	5	0	12
Publication of statistics cases externally	11	0	0	0	7
Channels for publishing statistics cases	3	0	8	0	7
Staff surveys to measure awareness	4	0	5	0	9
Training of employees on framework	11	0	3	0	4
Informing employees about the framework	4	7	1	3	3
Helpline or confidential advisor	3	0	0	0	15
Responsible people trained for function	8	0	5	0	5
Review and adaptation of framework	8	0	8	0	2

Table 6 – Culture (large companies)

Results: SMEs

The average scores of the SMEs in this dimension was 9 per cent. The highest score of 21 per cent was attained by Wereldhave. The lowest score of 0 per cent was acquired by both Koninklijke Brill and Eurocommercial Properties. Vastned and Flow Traders, the only SMEs that filled out the survey, received a score of 18 and 16 per cent, respectively. The low scores demonstrate that there seems to be a need for improvement within the dimension of culture among SMEs.

The goodwill towards internal reporting of wrongdoing is generally very low. For most questions, the SMEs scored zero points. However, this can be misleading as the majority of the SMEs did not fill out the survey and the results, therefore, solely depend on the publicly available data. Nevertheless, it is noteworthy that, in comparison to large companies, more SMEs provide a confidential advisor or helpline for advice to their employees.

The supportiveness of the corporate culture for internal reporting of concerns: Analysis by question (no. of companies)					
Question	>=1 Points	0.75 Points	0.5 Points	0.25 Points	0 Points
Discussion of reports by Board of Directors	1	0	1	0	7
Internal publishing of outcomes cases (anonymised)	1	0	0	0	8
Channels for publishing outcomes of cases	0	0	1	0	8
Publication of statistics cases externally	0	0	0	0	9
Channels for publishing statistics cases	0	0	0	0	9
Staff surveys to measure awareness	0	0	0	0	9
Training of employees on framework	0	0	0	0	9
Informing employees about the framework	0	0	0	1	8
Helpline or confidential advisor	5	0	0	0	4
Responsible people trained for function	0	0	2	0	7
Review and adaptation of framework	2	0	1	0	6

Table 7 – Culture (SMEs)

THE BUSINESS CASE FOR COMPANIES

As mentioned before, there are a variety of motivations for companies to adopt robust whistleblowing frameworks. These types of frameworks do not only empower staff to speak up about legal or ethical misconduct, they also help to protect companies from the effects of misconduct, including legal liability, serious financial losses and lasting reputational harm. Effective whistleblowing frameworks also foster a corporate culture of trust and responsiveness. More and more companies understand that these frameworks can provide real benefits to their culture, brand, long-term value creation and growth.

“Whistleblowing frameworks clearly provide real and highly valuable benefits to organisations of all types and sizes. But only when they truly commit to adopting robust, effective mechanisms will they be able to reap the benefits.” - Adrian D. Mebane, VP, Deputy General Counsel, The Hershey Company

This study demonstrates that most large companies in the Netherlands have some type of whistleblowing framework in place. However, most companies still have a long way to go before they are providing a comprehensive and trusted whistleblowing framework that offers effective whistleblowing protection. This section of the report looks into the benefits of strong whistleblowing frameworks and highlights some of its best practices within the private sector. This information has been derived from Transparency International's business case for “speaking up”.³⁰

The benefits of an effective whistleblowing framework

Several studies reflect the many benefits of effective whistleblowing frameworks.³¹ Also SMEs seem to reap the benefits of its adoption. The necessary costs to put these frameworks in place, can be contained by adopting mechanisms that are proportional to a company's size and risk profile.

KEY BENEFITS

- **Public signal of commitment to integrity and social responsibility:** shareholder demands for effective internal ethics and compliance frameworks are growing. Research by Ernst & Young found that the most important non-financial issue for investors is “good corporate citizenship and issuers’ policies on business ethics”.³² Effective whistleblowing frameworks signal to both investors and the public, that an organisation gives high importance to risk management, social responsibility and integrity.
- **Enhancement of organisational culture:** when sufficient encouragement from corporate leaders to speak out against misconduct is provided, whistleblowing frameworks can build an

³⁰ J. de Gramont, *The Business Case for “Speaking Up”. How Internal Reporting Mechanisms Strengthen Private-Sector Organisations*, 2017. Available at:

www.transparency.org/whatwedo/publication/business_case_for_speaking_up [accessed 20 October 2017].

³¹ A.J. Brown and Sandra Lawrence, *Strength of Organisational Whistleblowing Processes – Analysis from Australia*, Griffith University., 2017

³² Ernst & Young, *Is your Nonfinancial Performance Revealing the True Value of Your Business to Investors*, 2017. Available at: [www.ey.com/Publication/vwLUAssets/EY_-_Nonfinancial_performance_may_influence_investors/\\$FILE/ey-nonfinancial-performance-may-influence-investors.pdf](http://www.ey.com/Publication/vwLUAssets/EY_-_Nonfinancial_performance_may_influence_investors/$FILE/ey-nonfinancial-performance-may-influence-investors.pdf) [accessed 20 October 2017].

organisational culture of openness, trust and integrity. Such a culture can be nurtured by encouraging employees to communicate with ethics and compliance experts, who can provide guidance and advice on specific questions and engage proactively with employees on topics relating to integrity. Other factors include training that encourages dialogue, messaging from the top leadership emphasising that disclosures are beneficial for the organisation and the public interest, and – most importantly – corporate responsiveness to concerns and reports of misconduct.

- **Prevention and mitigation of liability:** private sector organisations are subject to myriad laws and regulations, covering labour, consumer protection, fraud and other forms of crime. Company leaders cannot be everywhere to ensure that all laws and regulations are being upheld, and must, therefore, rely on employees and stakeholders to speak up if they witness conduct that could expose the organisation to legal liability. Early detection gives companies the opportunity to address wrongful conduct before a situation escalates and triggers liability. It also provides an opportunity to voluntarily self-report to relevant regulatory agencies, before an agency initiates action and investigates, and comes to an adverse conclusion because the organisation failed to act.
- **Prevention or mitigation of financial losses:** a 2016 report by the Association of Certified Fraud Examiners (ACFE) found that, in more than 2,400 cases of fraud in 114 countries, around 40 per cent were uncovered through tip-offs. Organisations with reporting hotlines in place were much more likely to detect fraud through tip-offs (47.3 per cent) than organisations without hotlines (28.2 per cent). The AFCE also found that the presence of anti-fraud controls was correlated with lower losses and quicker fraud detection. In particular, the existence of hotlines resulted in 50 per cent loss reduction.³³ A recent study by the University of Iowa shows that financial fraud in companies significantly reduces in the years after whistleblowers have come out with information that exposes maladministration in business operations.³⁴ Effective internal whistleblowing frameworks do require investment. However, it is likely that the costs of adopting comprehensive internal whistleblowing frameworks will be offset by the revelation of valuable information much sooner than would otherwise have been the case.
[NB: the adoption of a whistleblower hotline is one of the easiest and least expensive means available to improve corporate governance, making it highly suitable for SMEs.]
- **Continuous improvement in compliance and risk management:** gathering information on the issues raised through effective whistleblowing frameworks allows organisations to detect patterns and make improvements to their policies and procedures in order to prevent future problems. It also allows leaders to identify where more resources are needed to reduce risk exposure. Many organisations use “sanitised and anonymised” incidents as learning tools to

³³ ACFE, *Global Fraud Study. Report to the Nations on Occupational Fraud and Abuse*, 2016. Available at: www.acfe.com/rtnn2016/docs/2016-report-to-the-nations.pdf [accessed 19 October 2017].

³⁴ Jaron H. Wilde, ‘The Deterrent Effect of Employee Whistleblowing on Firms’ Financial Misreporting and Tax Aggressiveness’, *The Accounting Review*, September 2017, Vol. 92, No. 5, pp. 247-280.

train employees to detect and address problems ethically and in accordance with laws and organisational policies.

- **Strong reputation:** protecting a brand from reputational damage is a key private sector concern. An ethical breach or legal violation can destroy an organisations' good name and provoke severe consequences, including loss of customers, poor recruitment, low staff morale, lower investment or funding and lost profits. By creating an environment that is conducive to internal reporting to detect potential misconduct, leaders can prevent or mitigate the reputational damage that may ensue.

What does a strong reporting framework look like?

Four components are essential for an effective reporting framework:

- 1 Active encouragement to speak up:** a company's leadership must urge employees and stakeholders to report misconduct and commit to protecting those who do so.
- 2 Confidential reporting channels:** organisations must provide accessible and reliable channels to report misconduct, guaranteeing confidentiality or anonymity.
- 3 An effective response system:** procedures must ensure thorough, timely and independent investigations of reports of misconduct.
- 4 Robust user protection:** people reporting misconduct must be protected from all forms of retaliation, with transparent procedures for investigating retaliation complaints.

Elements of an effective whistleblowing framework

Dimension of analysis	Sub-dimension of analysis	Recommendation
Protection	Anti-retaliation	1. The possibility of reporting retaliation of reporters 2. Anti-retaliation policy that prohibits any form of retaliation against a reporter who, in good faith, makes a complaint or raises a concern
	Anonymity	3. The possibility of reporting wrongdoing on an anonymous basis given to reporters 4. The protection of reporters' identity ensured throughout all stages of the investigation process
Procedure	Report mechanism	5. More than two different channels available 24/7/365 for the reporting of wrongdoing
	Response mechanism	6. Feedback provided to reporters throughout all stages of the investigation process 7. Case Management System for recording, investigating and monitoring reports 8. Assigned clear accountability for all stages in the process 9. Screening reports to assess the relevance and type of wrongdoing
	Monitoring	10. The key statistics on whistleblowing cases collected and reviewed on a regular basis
Culture	Commitment from the top	11. Senior executives accountable for the whistleblowing frameworks 12. Statistics on whistleblowing cases monitored and discussed regularly by the Board of Directors 13. The whistleblowing frameworks reviewed on a regular basis 14. Regular employee surveys to measure the awareness of whistleblowing frameworks 15. Regular trainings for employees responsible for receiving and investigating reports 16. Confidential advisor appointed for advising employees about the reporting of wrongdoing
	Communication	17. Regular trainings for employees on whistleblowing frameworks 18. Regular communication to employees about whistleblowing frameworks 19. Lessons learned from whistleblowing cases spread internally among employees 20. Statistics about whistleblowing reports published externally (for example, in an annual report, website)

APPENDICES

I. Methodology – extended

The initial project description from TI-NL consisted of the following goals:

1. To design a methodology on how to assess whistleblowing frameworks on the protection they offer to whistleblowers;
2. To help TI-NL raise awareness about the importance of the protection of whistleblowers in the private sector;
3. To establish a ranking on the level of protection provided to whistleblowers, building on last year's TRAC report.

The research team discussed each goal to understand how it could be achieved. This discussion led to the question whether formal protection from policies and procedures alone is enough to protect a whistleblower. Moreover, doubt arose about whether establishing a ranking of the protection that the policies of the assessed companies provide to a whistleblower, is sufficient to reflect a true idea of the quality of the whistleblowing frameworks.

In order to promote the internal reporting of wrongdoing, the focus of the project needs to go beyond solely the formal protection provided by whistleblowing policies. The effectiveness of the whistleblowing frameworks and the goodwill towards internal reporting embedded in the corporate culture are also important to stimulate internal reporting of wrongdoing. The implementation of the aforementioned aspects, should be consistent and incorporated alongside other necessary provisions in order to guarantee an efficient whistleblowing framework.

Defining project focus

The first challenge was to understand how to stimulate internal reporting of wrongdoing in Dutch publicly listed companies. Through desk research and brainstorming, the research team concluded that Dutch publicly listed companies are not stimulating internal reporting of wrongdoing due to limited attention devoted to three key elements:

- (1) Lack of incentives: companies do not understand how the stimulation of internal reporting of wrongdoing can lead to positive business impact and can prevent negative business impact.
- (2) Lack of an assessment framework: companies are not aware how to appropriately assess the quality of their whistleblowing frameworks.
- (3) Lack of a roadmap: companies do not have access to best practices for whistleblowing frameworks and do not know how to stimulate internal reporting of wrongdoing.

In order to grasp the entire scope of positive- and negative business impacts around the stimulation of internal reporting, a full-blown academic research project would have been needed. This type of research is beyond the capacity and scope of this study.³⁵

Instead, this research focuses on the second and third key areas. The study provides a tool to assess whistleblowing frameworks of publicly listed companies, a ranking of the whistleblowing frameworks of 27 Dutch publicly listed companies and recommendations for establishing whistleblowing frameworks. By publishing this report, TI-NL intends to raise awareness of the importance of effective whistleblowing frameworks within the Dutch private sector.

Framework

In order to understand the dimensions that define effective whistleblowing frameworks, intensive desk research was conducted. Existing literature on whistleblowing frameworks was reviewed. Additionally, reports generated by private companies in the Netherlands and beyond, were examined. A total of 26 studies and reports were analysed to understand what is important for effective whistleblowing frameworks.

The findings of this desk research were validated through interviews with practitioners and experts on internal whistleblowing. Among the experts were auditors, lawyers and heads of compliance from different companies. Selection was based on knowledge of the topic and availability in the period of the establishment of the framework. The insights and knowledge of the experts on the subject proved to be useful in understanding which criteria are important, and what the best practices for each of the three elements entail.

Dimensions and sub-dimensions

Through the desk research and expert interviews, three dimensions for the evaluation of whistleblowing frameworks were established: protection, procedure and culture. For each of them, sub-dimensions were created.

- (1) The level of protection given to people reporting concerns internally
 - a) Anti-retaliation measures
 - b) Level of anonymity
- (2) The effectiveness of the internal reporting procedure
 - a) Reporting mechanism
 - b) Response mechanism
 - c) Monitoring
- (3) The supportiveness of the corporate culture for internal reporting of concerns
 - a) Commitment from top management
 - b) Communication.

³⁵ See also J. Brabers et al, *Preadvies 2015; Klokkenluiders in perspectief. Vereniging van Handelsrecht*, 2015. P. 27-42. Available at: <http://vereenigingshandelsrecht.nl/images/docs/PreadviesVHR2015.pdf> (Dutch only) [accessed 20 October 2017].

Ranking

As an implementation of the framework, 27 Dutch publicly listed companies were evaluated according to their whistleblowing frameworks.

Company selection

The list of the companies included in this study consists of 18 large companies recorded in the AEX index (NYSE Euronext Amsterdam) and 9 SMEs in the AMX index with a maximum of 250 employees (FTE). The selection of the companies follows the 2016 TRAC-report published by TI-NL.

Data collection

Based on the three evaluations dimensions established in the framework, a questionnaire was created. The question-and-answer possibilities are based on existing studies, desk research and expert interviews. All 27 Dutch listed companies were asked to fill out the questionnaire through an online survey platform. The questionnaire was directed at parties responsible for whistleblowing frameworks within the company. The companies were given two weeks to fill out the questionnaire. The methodology and evaluation criteria were shared with each of the companies before they were asked to fill out the questionnaire.

Not responding companies

Of the 27 Dutch publicly listed companies that received the questionnaire, 13 companies filled out the questionnaire within the first deadline of two weeks. These 13 responses all came from the largest Dutch publicly listed companies. From the 9 Dutch publicly listed SMEs, only one response was recorded.

The companies that did not respond were sent a reminder and were reached out to by phone. For those companies that did not respond, research of publicly available information on their whistleblowing frameworks was conducted. With this information, the questionnaire was filled out as comprehensively as possible. The outcome of the questionnaire was sent to all companies (including the non-responsive companies) for review purposes and feedback.

Establishment of rankings

The 27 Dutch listed companies were ranked on each question by giving a score on a scale from zero to one. Based on this scoring, rankings for all three dimensions of the framework were developed and ultimately, an overall ranking of companies was composed.

The full questionnaire, as well as a more detailed explanation of why this method of data collection was employed, can be provided by Transparency International Nederland.

Scoring

Answer possibilities and scoring values									
Question	A	B	C	D	E	F	G	H	Max points
Protection	2	1	0						1
	3	0	1	2	3				3
	4	1	0						1
	5	1	0						1
	6	0.25	0.25	0.25	0.25	0	0.25		1.25
	Total								7.25
Procedure	7	0.25	0.5	0.25	0.25	0.25	0.5	0.25	2.25
	8	1	0						1
	9	0.5	1	1	1	1	0	1	1
	10	1	0						1
	11	0	0	1	0.5	0			1
	12	1	1	0.5	1	0	0.5		1
	13	1	0						1
	14	1	0.5	0					1
	15	0.25	0.25	0.25	0.25	0.25	0.25	0.25	1.75
	16	1	0.5	0.25	0				1.5
	17	Not scored							
	Total								12.5
Culture	18	1.5	1	0.75	0.5	0			1.5
	19	1	0						1
	20	0.5	0.5	0.5	0.5				2
	21	1	0						1
	22	0.5	0.5	0.5	0.5				2
	23	not scored							
	24	1	0.5	0					1
	25	0	0.5	1					1
	26	0.25	0.25	0.25	0.25	0.25	0.25	0	1.75
	27	1	0					0.25	1
	28	0.5	1	0					1
	29	1	0.5	0					1
	Total								14.25
Total max points									34

Figure 1 – Scoring mechanism

As demonstrated in the table above, for every question, possible responses were allocated a certain number of points based on the importance of that particular criteria. With a maximum score on protection of 7.25; a maximum score on procedure of 12.5; and a maximum score on culture of 14.25, the maximum total score amounts to 34 points. None of the dimensions were given any extra weight. The final score was calculated by adding up the points received and dividing that number with the possible maximum score that a company could have received.

Recommendations

Recommendations for companies

Based on the desk research and expert interviews, recommendations for good whistleblowing frameworks were developed. Recommendations were created for each of the dimensions: protection, procedure and culture. The recommendations are applicable for all private sector companies.

II. Desk research references

The following companies did not respond to the questionnaire. To complete the questionnaire with publicly available data, the following sources were used.

Unilever

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<http://wolterskluwer.com/binaries/content/assets/wk/pdf/corporate-governance/policies-and-articles/wolters-kluwer-whistleblower-policy.pdf>
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http://wolterskluwer.com/binaries/content/assets/wk/pdf/investors/annual-reports/wolters-kluwer_2016_annual_report.pdf
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Wereldhave

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Accessed on 4 June 2017

Koninklijke Brill

www.brill.com/files/brill.nl/whistleblower_policy_english.pdf
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Kiadis Pharma

www.kiadis.com/wp-content/uploads/2015/08/Whistleblower-Procedure.pdf
Accessed on 4 June 2017

III. Questionnaire

PROTECTION

These questions measure the level of protection given to the reporters of wrongdoing.

Useful concepts:

- *Wrongdoing in the workplace covers impropriety of any nature that occurs within or is related to the workplace.*
- *Retaliation includes any adverse action taken against a reporter of wrongdoing. Retaliation can include any negative job action, such as demotion, discipline, firing, salary reduction or job or shift reassignment.*

1. What is the name of your company?

2. Is it possible for employees in your company to report wrongdoing anonymously?

- Yes
- No

3. How does your company manage information about the whistleblowers' identity during the investigation process?

- This information is always shared for the purposes of the investigation
- This information may be shared for the purposes of the investigation without asking the individual for approval
- This information may be shared for the purposes of the investigation, but only if approval is granted by the individual
- This information is not shared for the purposes of the investigation

4. Does your company offer employees the possibility to report retaliation related to their report?

- Yes
- No

5. Does your company communicate to employees that retaliation on reporters of wrongdoing is forbidden?

- Yes
- No

6. In what way does your company protect reporters of wrongdoing against retaliation? (choose all relevant answers)

- The employee may change the department/office/location of work
- There is a non-retaliation policy in place that includes disciplinary sanctions for those who retaliate
- An independent party supports the employee during and after the investigation process

- Employees may change their working schedule
- There is no formal protection

PROCEDURE

These questions measure the effectiveness of the whistleblowing procedure.

7. Which of the following channels are available to employees in your company for reporting wrongdoing? (choose all relevant answers)

- Internal hotline
- External hotline (outsourced to third party provider)
- Dedicated email
- In-person reporting
- Internal web-based system
- External web-based system (outsourced to third party provider)
- Other (please specify)

8. Does your company make its whistleblowing reporting channels available 24 hours a day, 7 days a week?

- Yes
- No

9. Who is responsible for the governance of your company's whistleblowing programme?

- Board of Directors
- Audit Committee
- Internal Audit
- Compliance committee
- Chief Compliance Officer
- Independent party
- Other (please specify the department and function of this person/these people in the company)

10. Is there a preliminary verification of incoming reports of wrongdoing to assess the relevance and type of issue?

- Yes, they are first screened in terms of their type and risk-level
- No, they all go directly to people responsible for the investigation process

11. Who is ultimately responsible for deciding if a wrongdoing report requires further investigation?

- Initial recipient of the report
- The party responsible for operating the reporting channel
- The party responsible for the investigation process
- Other (please specify department, function, level of this person in the company)

12. Who is responsible for investigating the incoming reports?

- Internal audit
- Compliance function
- Legal function
- Dedicated investigation team
- Third party service provider
- Other (please specify)

13. Are employees who reported wrongdoing provided with feedback about the status of the case?

- Yes
- No

14. Does your organisation operate a Case Management System for recording, investigating and monitoring the wrongdoing cases?

- Yes, we have a Case Management System that services all reporting channels
- Yes, we have a Case Management System, however it services only selected channels (for example, compatible only with hotline)
- No, we do not have such a Case Management System

15. Which of the following statistics are measured to evaluate the effectiveness of the whistleblowing programme in your company? (choose all relevant answers)

- Number of reports
- Number of reports per reporting channel/employee/department/issue type
- Percentage of reports investigated
- Percentage of reports reported anonymously
- Number of retaliation reports
- Average cost per report
- Other (please specify)

16. How often are these statistics measured?

- On a monthly basis
- On a quarterly basis
- On a yearly basis
- They are not measured

17. How many whistleblowing reports does your company receive on an annual basis?

- None
- This is not registered
- 1-10 11- 30 31-51 51-100 101-500 >500

CULTURE

These questions measure the supportiveness of the corporate culture for the reporting of wrongdoing.

18. How often does the Board of Directors discuss the number and type of wrongdoing reports?

- Monthly
- Every quarter
- Twice a year
- Once a year
- Never

19. Apart from providing feedback to the reporter of wrongdoing, does your company publish internally, on an anonymous basis, the outcomes of whistleblowing cases?

- Yes
- No

20. If yes, where does your company publish the outcomes of whistleblowing cases? (choose all relevant answers)

- Email to staff
- Email to management for circulation to staff
- Message posted on the intranet
- Other (please specify)

21. Does your company publish statistics about whistleblowing cases externally?

- Yes
- No

22. If yes, where does your company publish these statistics? (choose all relevant answers)

- Annual report
- Website
- Public Newsletter
- Other (please specify)

23. How aware would you say your company's employees are of the whistleblowing programme?

- Very aware
- Quite aware
- Not very aware
- Not at all aware

24. Does your company conduct staff surveys to measure the awareness and understanding of the whistleblowing programme?

- Yes, at least once a year
- Yes, but less than once a year

- No

25. How often are employees in your company trained on the usage of the whistleblowing programme?

- There is no mandatory trainings
- Only once as part of mandatory onboarding training
- There is regular mandatory training

26. Apart from training, how does your company inform employees about the whistleblowing programme? (choose all relevant answers)

- Dedicated intranet section
- Regular newsletter/bulletin to staff
- Dedicated section in the annual report
- Staff presentation
- Yearly performance reviews (*beoordelingsgesprek*)
- Staff meetings
- None
- Other (please specify)

27. Does your company have a helpline or a confidential advisor to advise employees about the reporting of wrongdoing?

- Yes
- No

28. Are the people responsible for the whistleblowing programme trained to perform their functions?

- Yes, these people were trained only once when they were appointed
- Yes, these people still attend regular training
- No, these people have not attended any special training to perform their functions

29. Does your company review and adapt the whistleblowing programme regularly?

- Yes, the programme is reviewed at least once a year
- Yes, the programme is reviewed regularly, but less than once a year
- No, the programme has not been changed since implementation in year (please specify)