



# THE STATE OF THE WHISTLEBLOWER PROTECTION ACT IN THE NETHERLANDS

Transparency International Nederland is the Dutch Chapter of Transparency International. Transparency International Nederland 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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# INTRODUCTION

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Whistleblowing is recognized as one of the most effective ways to identify and prevent misconduct such as corruption and fraud. A staggering 43% of all fraud cases are discovered through reports, half of which come from employees. High-profile corruption and fraud scandals have often come to light because employees reported them to their employers, to the authorities, or the media. It's even believed that whistleblowers have uncovered more corruption and fraud cases than any other actor—including audits, the police, or the media.<sup>1</sup> The Public Prosecution Service also indicates that it often cannot initiate prosecutions without internal tips.

The urgency to protect the rule of law and democracy as well as the right to freedom of expression is greater than ever. Globally, we are seeing the rise of autocratic leaders who undermine integrity mechanisms. In the United States, the Trump Administration has put pressure on the rule of law by structurally undermining the division of power and checks and balances. Within the EU, too, we are seeing the erosion of democratic norms, as in Hungary and Slovakia, where the independence of the judiciary and press freedom are under threat. In almost all EU-countries we see civil society organisations being under attack and a severely shrinking civic space.

In the Netherlands, recent governance issues – such as the Child Benefits scandal and widespread "revolving door" practices – highlight vulnerabilities in rule-of-law mechanisms. The three highest institutions of state warn that the Dutch rule of law must be better protected. In that context, fostering an enabling environment for whistleblowers in the country is needed. The new Dutch Whistleblower Protection Act, adopted to transpose the EU Whistleblowing Directive, expanded protections to whistleblower, by shifting the burden of proof to organisations, which now have to demonstrate that they did not retaliate against the whistleblower, and allowing whistleblowers to report directly to the competent authorities. However, both the Dutch Whistleblower's Authority and TI-NL highlight the complexity of the legislation and the difficulty to meet the "public interest" criterion – which is required to receive protection – causes confusion and uncertainty.<sup>2</sup>

Whistleblowers are indispensable to protect the public interest. Their disclosures have uncovered corruption, fraud, and malpractice, saving public funds, protecting health and the environment, and strengthening trust in institutions. However, in more than 75 percent of cases, whistleblowers face retaliation. This can include bullying, intimidation, exclusion, and even demotion, suspension, and dismissal. Robust whistleblower protection legislation is vital to prevent this, but many whistleblower protection laws are weak and fail to protect whistleblowers from retaliation and other injustices.

Fortunately, after effective lobbying by the European branches of Transparency International, the EU Whistleblower Protection Directive (hereinafter: the Directive) was adopted at the end of 2019, which had to be implemented into the national legislation of all EU Member States by December 17, 2021. The Directive aims to ensure that future whistleblowers are not harmed if they come forward to report (suspicions of) wrongdoing, by requiring companies, public institutions, and

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<sup>1</sup> <https://www.acfe.com/-/media/files/acfe/pdfs/rtnn/2026/2026-report-to-the-nations.pdf>

<sup>2</sup> <https://open.overheid.nl/documenten/c8434582-3641-41d6-bdf8-73d50be4cbee/file>

authorities to offer (potential) whistleblowers a high level of protection and safe ways to report wrongdoing.

As a result of the Whistleblower Protection Directive, the Whistleblower Protection Act came into force in the Netherlands on February 18, 2023. Although the Directive has the potential to strengthen whistleblower protection, its implementation in the Netherlands raises significant concerns. During the transposition process, it became clear that the Netherlands opted for an approach that was minimalistic, introduced unnecessary complexity and failed to meet all EU requirements.

In this paper, Transparency International Nederland (TI-NL) identifies the main gaps and weaknesses of the Dutch Whistleblower Protection Act, and proposes actionable recommendations for the legislator, policymakers and other relevant stakeholders, to ensure optimal implementation of the EU Whistleblower Directive and strengthened whistleblower protection.

# ENFORCEMENT AND SANCTIONS

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The Dutch Whistleblower Protection Act does not provide sanctions for violations of whistleblower protection, i.e., retaliation, breach of confidentiality regarding whistleblower's identity, legal proceedings against a whistleblower, obstruction of reporting, and violation of the obligation to have a whistleblowing policy. A commitment to impose administrative sanctions exists, but the sanctions regime still needs to be developed. Conversely, in the Netherlands a court may impose sanctions for whistleblowers who knowingly report false information. This creates a detrimental chilling effect.

In line with the EU Whistleblower Directive (in art. 23) which requires Member States to take effective sanctions, competent authorities should be given the power to impose sanctions. This is also in line with the OECD recommendations<sup>3</sup> which recommend “providing effective, proportionate and dissuasive sanctions for those who retaliate against whistleblowers”.

The urgency of a sanctions regime in the Netherlands becomes painfully clear from the statistics of the Dutch Whistleblower Authority, which show that 90% of those seeking advice from the Dutch Whistleblower Authority experience disadvantage after filing a report.<sup>4</sup> The authority views the enforcement of prohibition against detriment as a necessary cornerstone of whistleblower protection and advocates for urgent measures by the legislator for the implementation of the Authorities' sanctioning powers.<sup>5</sup> The Dutch government should comply with all requirements of the Whistleblower Protection Directive and give the Dutch Whistleblower Authority without further delay, the sanctioning power to impose administrative sanctions on those who break or fail to comply with the Whistleblower Protection Act.<sup>6</sup> After all, without sanctions, supervision and enforcement are impossible and the law is toothless.

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<sup>3</sup> OECD, *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD/LEGAL/0378, section XXII, sub viii

<sup>4</sup> Huis voor Klokkeluiders, Jaarverslag 2025,

<https://www.huisvoorklokkeluiders.nl/documenten/2026/03/10/jaarverslag-huis-laait-zien-9-op-de-10-klokkeluiders-ervaat-benadeling>

<sup>5</sup> Huis voor Klokkeluiders, Letter to the informateur regarding supervision and sanctioning power,

<https://www.huisvoorklokkeluiders.nl/documenten/2025/11/27/brief-aan-informateur-buma>

<sup>6</sup> Transparency International Nederland: *How well does the Netherlands protect its whistleblowers in comparison to other EU countries? (Hoe goed beschermt Nederland haar klokkenluiders tegenover andere EU-landen?)*, 8 November 2023, <https://www.transparency.nl/nieuws/2023/11/hoe-goed-beschermt-nederland-haar-klokkeluiders-tegenover-andere-eu-landen/>

# OPERATIONAL CHALLENGES

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National statistics from the Dutch Whistleblower Authority show only a small proportion of external reports are formally recognised as whistleblowing cases. In 2024, the Whistleblower Authority received 467 requests for advice, of which only 26 have been classified as wrongdoing under the Whistleblower Protection Act.<sup>7</sup> In 2025, the Whistleblower Authority received 697 requests for advice, of which only 41 have been classified as whistleblower cases. Many reports concern an unsafe working environment such as transgressive behaviour, intimidation and abuse of power. The Whistleblower Authority notes that it is difficult for an employee to demonstrate that a situation involving social insecurity goes beyond individual interests (which could jeopardize the public interest). In that case, the report does not meet the legal definition of a suspicion of wrongdoing in the public interest, and the reporting person is not protected under the Whistleblower Protection Act.

This potentially prevents many reporting persons from benefiting from legal protections. The discrepancies may be attributed to a lack of public awareness about what constitutes whistleblowing. However, this determination depends not only on the legal framework, but also on the training, independence and capacity of the authority involved, which in some instances may lead to a limited interpretation of the scope of the legislation. In the Netherlands, certain authorities have publicly stated that limited financial resources restrict them to handling only the most serious cases.<sup>8</sup>

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<sup>7</sup> Huis voor Klokkeluiders, Jaarverslag 2024, <https://www.huisvoorklokkeluiders.nl/documenten/2025/03/14/jaarverslag-2024>

<sup>8</sup> [www.autoriteitpersoonsgegevens.nl/contact/als-klokkeluidereen-misstand-op-uw-werk-melden-bij-de-ap](http://www.autoriteitpersoonsgegevens.nl/contact/als-klokkeluidereen-misstand-op-uw-werk-melden-bij-de-ap)

# REMEDIES AND COMPENSATION

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The EU Whistleblowing Directive recognises that retaliation exposes whistleblowers to significant financial, professional and emotional harm and therefore requires member states to provide effective remedial measures. Whistleblowers and those connected to them must have access to full, “makewhole” compensation and appropriate remedies, including interim relief, tailored to the type of retaliation and the damage suffered.

Central to this approach is the principle of restoring the whistleblower, wherever possible, to the status quo ante – the position they would have been in had the retaliation not occurred. This ensures that protection is not merely symbolic but delivers real and practical redress.<sup>9</sup>

Remedies in the Netherlands are restricted or fragmented, often relying on general labour law provisions. The Netherlands does not offer whistleblowers full compensation for the damage they have suffered and does not offer the possibility of reinstating the whistleblower in their previous position.

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<sup>9</sup> Transparency International, 2026, How Effective is Whistleblower Protection in the EU?, [https://files.transparencycdn.org/images/How-effective-is-whistleblower-protection-in-the-EU\\_Report.pdf](https://files.transparencycdn.org/images/How-effective-is-whistleblower-protection-in-the-EU_Report.pdf)

# REVERSAL OF THE BURDEN OF PROOF

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Reversal of the burden of proof is a cornerstone of effective whistleblower protection. Comparative experience from other jurisdictions indicates that it significantly increases whistleblowers' chances of succeeding on the merits. It is therefore essential to ensuring that the protection provided by the Directive is effective in practice. As a general rule, the burden of proof in judicial or administrative proceedings lies with the person bringing the claim. However, retaliation against whistleblowers is frequently subtle or disguised. Furthermore, given the structural power imbalance between the whistleblower and the organisation concerned, retaliation is often difficult to prove. For this reason, in line with best practice, the Directive provides for reversal of the burden of proof. Once a reporting person demonstrates that they made a report or public disclosure and subsequently suffered a detriment, retaliation is presumed. It then falls to the person or entity that imposed the detrimental measure to prove that the action was based on duly justified grounds, that is, it was in no way linked to the report or public disclosure.<sup>10</sup>

There is no clearly defined rebuttal standard to the burden of proof in The Netherlands. The Whistleblower Protection Act does not specify how the employer must prove that a measure was not retaliatory, creating potential legal uncertainty for the whistleblower. However, in February 2025 the Supreme Court has ruled that the employer must establish the absence of any causal link between the detrimental measure and the report.<sup>11</sup>

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<sup>10</sup> Transparency International, 2026, How Effective is Whistleblower Protection in the EU?, [https://files.transparencycdn.org/images/How-effective-is-whistleblower-protection-in-the-EU\\_Report.pdf](https://files.transparencycdn.org/images/How-effective-is-whistleblower-protection-in-the-EU_Report.pdf)

<sup>11</sup> <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2025:190>

# CONDITIONS AND THRESHOLDS FOR PROTECTION

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Under the Dutch Whistleblower Protection Act, a report is only considered a whistleblower report if the public interest is at stake or if the report constitutes a breach of EU law (which in itself is unclear on the basis of the provisions of the Act). Due to this ambiguity, many whistleblowers run the risk of not receiving protection against retaliation or decide not to report at all. This is because it is often impossible to determine with certainty whether their report actually touches upon the 'public interest'.

TI-NL considers that the 'public interest' criterion is often applied too rigidly, and as a result many reports of wrongdoing were not classified as whistleblowing reports, meaning the whistleblower received no protection. In an attempt to clarify the public interest requirement in the Whistleblower Protection Act, the government has added additional wording that the suspicion of wrongdoing should be either part of a pattern, structural in nature or serious/broad in scope. When explaining these ambiguous conditions, the former Minister of Interior explicitly stated that transgressive behaviour and corruption do not necessarily fall under this definition.

The unnecessary requirement in the Dutch Whistleblower Protection Act that there must be a "public interest" at stake before someone has the right to receive whistleblower protection creates uncertainty and undermines the law in various ways. For example: how does a whistleblower know in advance whether something will be labelled as a 'wrongdoing with public interest'. Isn't every case of corruption or abuse wrongdoing?

In March 2025, the Whistleblower Protection Act has been evaluated and the implementation assessment by SEO in collaboration with Leiden University has been published.<sup>12</sup> This assessment confirms that the definition of wrongdoing involving the public interest is complex and therefore difficult to understand for all parties involved: the whistleblower, the employer, the confidential advisor, the competent authorities and even for judges. As a result of this complex definition, it is less clear whether the whistleblower enjoys protection.

It is precisely on this point that a court of appeal also seems to be siding with us. In October 2024, the court of appeal in Den Bosch ruled that a whistleblower in a nursing home had been wrongfully dismissed. Previously, the subdistrict court judge had found this to be correct, because there was no 'patron', ergo, no 'public interest', so no whistleblower case and protection. The court of appeal in Den Bosch found that the whistleblower was indeed wrongfully dismissed. The whistleblower suspected a homicidal offence, and the court of appeal finds that this is by definition a public interest, even if it is not structural.<sup>13</sup>

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<sup>12</sup> SEO, Veilig voor de melder? Invoeringstoets Wet Bescherming Klokkenuiders, december 2024: <https://www.universiteitleiden.nl/nieuws/2025/03/rapport-over-bescherming-klokkenuiders-verstuurd-naar-tweede-kamer>

<sup>13</sup> Court of Appeal 's-Hertogenbosch (Gerechtshof 's-Hertogenbosch): *Whistleblowers nursing hom unfairly fired (Klokkenuider verpleegtehuis onterecht ontslagen)*, 10 October 2024, <https://www.rechtspraak.nl/Organisatie-en->

While the purpose of the Whistleblower Protection Act is to give whistleblowers certainty, the public interest requirement does exactly the opposite and creates uncertainty for (potential) whistleblowers.

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[contact/Organisatie/Gerechtshoven/Gerechtshof-s-Hertogenbosch/Nieuws/Paginas/Klokkenluider-verpleegtehuis-onterecht-ontslagen.aspx](#)

# ANONYMOUS REPORTING

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Following an adopted amendment by Dutch Parliamentarian Pieter Omtzigt to enable internal anonymous reporting of suspicions of wrongdoing, the government published a proposal for a general administrative decree in Spring 2024. While many parties responded positively, pressure from employers' associations with the argument of an unnecessary administrative burden led to the withdrawal of the proposal. According to the government, the proposal to require organisations in receiving and handling anonymous reports presents too many practical and legal obstacles. However, a recent study by TI-NL into internal reporting mechanisms within the Dutch business community shows that 90% of the 70 companies assessed already offer their employees the opportunity to report wrongdoing anonymously.<sup>14</sup> A promise has been made that its implementation will be included in a subsequent amendment of the law, with the submission of a new Bill scheduled for 2026.

There are ample reasons to implement the amendment regarding anonymous reporting as soon as possible. Research shows that the option of anonymous reporting can persuade potential whistleblowers to report suspected misconduct. That applies in particular if there are suspicions that organised crime is involved. Moreover, it can prevent people from feeling compelled to report externally or to go public through the press. Anonymous reporting is an essential aspect of any successful whistleblowing program because it is crucial in promoting the reporting of wrongdoing and provides ultimate protection against retaliation.

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<sup>14</sup> Transparency International Nederland, Whistleblowing Frameworks 2024, [https://www.transparency.nl/wp-content/uploads/2024/12/Whistleblowing-Frameworks-Research\\_Report\\_2024\\_final\\_final.pdf](https://www.transparency.nl/wp-content/uploads/2024/12/Whistleblowing-Frameworks-Research_Report_2024_final_final.pdf)

# RECOMMENDATIONS

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## CONDUCT COMPREHENSIVE AND INCLUSIVE LEGISLATIVE REFORMS

- Undertake legislative reforms to address all identified gaps in compliance with the Directive and shortcomings in relation to best practice standards. Start these reforms as soon as possible as the Whistleblower Protection Act entered into force more than three years ago.
- Ensure that reform processes are inclusive and involve relevant stakeholders, including public authorities, labour inspectorates, professional associations, trade unions, data protection authorities, ombudspersons, civil society organisations and media representatives.
- Accompany legislative reforms with adequate resourcing including financing, awareness-raising campaigns and targeted training for all relevant actors.
- Enact legislation and the necessary general administrative decrees to implement anonymous reporting and encourage competent authorities and organisations to implement secure internal and external reporting systems that allow anonymous submissions and two-way communication with case handlers.

## ALIGN LEGAL FRAMEWORKS WITH THE DIRECTIVE

Policymakers in the Netherlands should ensure that the Whistleblower Protection Act fully reflects both the letter and the purpose of the Directive, including, where necessary, via legislative reforms. In particular, national policy makers should:

- Ensure that whistleblower protection is granted solely on the basis of the Directive's conditions — namely that the reporting person had reasonable grounds **to believe the information was true** and that the report was made through an appropriate channel — without introducing additional requirements, such as impact on society.
- Ensure a full and **effective reversal of the burden of proof** in retaliation cases, eliminating ambiguities that allow restrictive interpretations and clarifying this in the Whistleblower Protection Act.
- Guarantee **effective remedies** and full compensation for whistleblowers who suffer retaliation, including:
  - The annulment of all retaliatory measures
  - The provision of financial compensation for all losses and harm suffered, including direct, indirect, and future losses, as well as both financial and non-financial damage.
- Although **non-disclosure clauses** (undesirable confidentiality provisions) have been declared void as of February 18, 2023, following the entry into force of the Whistleblower Protection Act, existing non-disclosure clauses dating from before February 18, 2023, should also be declared void.

- Establish a comprehensive system of **sanctions** covering all violations required by the Directive, including hindering reporting, retaliation against reporting persons or associated individuals, initiating vexatious legal proceedings and breaching the confidentiality of a whistleblower's identity.
- Introduce **sanctions** for failure to establish or properly operate whistleblowing systems, including obligations related to follow-up, feedback and reporting of data.
- Ensure that **sanctions** are effective, proportionate and dissuasive by:
  - Setting sufficiently high maximum fines.
  - Introducing other types of sanctions where necessary, such as exclusion from public procurement, withdrawal of licences or permits, and publication of sanctions.
  - Allowing sanctions to be imposed on both legal entities and natural persons responsible for retaliation or other violations where appropriate.
- Provide systematic training and capacity-building for judges, prosecutors, lawyers and competent authorities to ensure consistent and correct application of whistleblower protection standards.

## ALIGN LEGAL FRAMEWORKS WITH BEST PRACTICE

Beyond minimum compliance, national frameworks should be strengthened to reflect international best practice, in particular in the following areas:

- **Material scope:** Ensure that whistleblower protection laws establish a comprehensive and coherent material scope covering reporting of any act or omission that is unlawful, abusive and can cause harm. In order to provide much-needed certainty to potential whistleblowers and to not miss out on any opportunity to prevent or solve issues at an early stage, TI-NL recommends broadening the legal definition of wrongdoing by removing the restrictive requirement that the public interest must be at stake.
- **Anonymous reporting:**
  - Ensure the acceptance and systematic follow-up of anonymous reports.

## STRENGTHENING WHISTLEBLOWING AUTHORITIES

Authorities with whistleblowing related responsibilities are a key component of effective whistleblower protection systems. Policy makers in the Netherlands should:

- Ensure that authorities have clear mandates, powers, operational independence and sufficient financial and human resources.
- Enable authorities to provide a wider range of protective measures to whistleblowers and penalize retaliation.
- Collect, analyse and publish comprehensive gender-disaggregated data on the implementation and enforcement of the whistleblower protection legal framework.

## STRENGTHENING ADVICE AND SUPPORT FOR WHISTLEBLOWERS

Whistleblowers should have access to comprehensive support before, during and after reporting wrongdoing. Policy makers and authorities in the Netherlands should:

- Evaluate the effectiveness of the currently existing legal and psychological assistance framework.
- Guarantee access to legal aid without overly restrictive eligibility conditions.
- Provide additional support services where necessary, including financial support.

### IMPROVING DATA COLLECTION, MONITORING AND TRANSPARENCY

Better data is essential for evaluating the effectiveness of whistleblower protection frameworks. Competent authorities under the Whistleblower Protection Act should:

- Ensure the collection, analysis and annual publication of comprehensive national data on the implementation and enforcement of the Whistleblower Protection Act covering at least:
  - Data on reports of wrongdoing: number of reports received (including anonymous reports), channels used; number of reports falling outside the system's scope, with reasons; types of wrongdoing reported; categories of reporting persons; Actions taken and outcomes, including follow-up measures, proceedings, sanctions, financial impact (e.g. damage identified, harm prevented, recoveries, compensation), and changes to policies or procedures.
  - Data on protection against retaliation: Number and types of retaliation complaints and outcomes, measures taken to address retaliation, including protection or corrective actions, and time to resolution.
  - Levels of public awareness and trust in reporting and protection mechanisms.
  - Capacity and resources: Human and financial resources allocated, including staffing, training, use of external expertise, significant changes in resource allocation and technological infrastructure.
- Establish searchable databases of anonymised case summaries from courts and competent authorities.
- Require public and private organisations and authorities to submit to central authorities and publish annually comparable data on whistleblowing reports.

### BUILDING INCLUSIVE AND GENDER-RESPONSIVE WHISTLEBLOWING FRAMEWORKS

Whistleblower protection frameworks should recognise structural barriers that may affect individuals' ability to report wrongdoing safely. Competent authorities under the Whistleblower Protection Act should:

- Establish inclusive data collection standards for whistleblowing systems, including gender-disaggregated data and, where appropriate and in compliance with data protection requirements, other demographic indicators such as age, ethnicity, disability, sexual orientation, job grade and geographic location.
- Analyse such data to identify disparities in reporting patterns, exposure to retaliation and access to protection across different groups.
- Use these insights to design policies and institutional practices that strengthen accessibility, fairness and trust in whistleblowing systems.<sup>15</sup>

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<sup>15</sup> Transparency International, 2026, How Effective is Whistleblower Protection in the EU?, [https://files.transparencycdn.org/images/How-effective-is-whistleblower-protection-in-the-EU\\_Report.pdf](https://files.transparencycdn.org/images/How-effective-is-whistleblower-protection-in-the-EU_Report.pdf)