



27. Have a speak-up procedure

Challenge

In order to be able to identify and address possible abuses at an early stage, it is important to have a good speak-up procedure. Employees should feel free to raise issues that make them uncomfortable. This is also called a whistleblower procedure, regulation reporting abuses, regulation integrity reports or a hotline procedure. Incidentally, in the Netherlands all organizations with more than 50 employees must have a whistleblower scheme.

The speak-up procedure only works if employees are familiar with the arrangement and have confidence in it. The main reasons for not reporting misconduct are that employees [1]:

- Are not convinced that every report is being investigated seriously and by an independent party
- Not being convinced that they can truly remain anonymous, and with it fear
- Fearful of retaliation

These concerns need to be addressed, for example by being clear about what happens when a report comes in and giving examples of how reports have been investigated and what has happened to them. It should also be possible to make a report anonymously. It is noted that the importance of an open and safe corporate culture must be paramount and it is a pity that a report is made anonymously. But: rather an anonymous report than no report.

Incidentally, the whistleblower scheme is also used as a source of information: through this means, employees can ask a question about the code of conduct, the compliance policy or a compliance procedure.

Solution

Employees are encouraged to ask questions about the code of conduct, a compliance policy or procedure and to report a possible violation thereof. The threshold to ask or report something should therefore be kept as low as possible. It is made clear that no measures are taken (non-retaliation) against someone who reports something in good faith. To further reduce the fear of retaliation, employees should also be able to make anonymous reports. The effectiveness of the speak-up procedure can be further increased by also opening it up to third parties.



If people are troubled by something or see something that goes against the code of conduct, they should first discuss this with their manager and/or direct colleagues. If this is not possible, if the person in question does not feel comfortable with this, if this has already been tried before and that has led to an unsatisfactory outcome, then contact can be made with specialized positions, such as HR (in case of undesirable behavior), Audit (in case of fraud) or Compliance. The employee can be guided / coached by a confidential advisor. If the employee does not feel comfortable with this or if this does not lead to the desired outcome, the whistleblower scheme can be used.

The anonymity of reporters is best ensured by using a third-party service provider. This should facilitate that reports can be made in all relevant languages, by telephone or online, whether anonymous or not (to the extent permitted by local law). Preferably, a free local telephone number is made available in each country. As far as possible, the reports shall be recorded in a central system.

The third-party service provider guarantees the anonymity of the employees. From the address of the website and from the way in which the phone is answered in the call center, employees can see that they do not have direct contact with their own company but with a specialized third party. With some service providers, a message can also be recorded instead of that there is contact with a call center employee.

A procedure is drawn up in advance that describes how reports are handled after they have been received. It is wise to also think about who will investigate certain reports and how. To this end, an investigations procedure can be drawn up and rolled out. Due to differences in local legislation, a supplement / adjustment is often required locally. For example, if researchers want to have access to e-mails from employees, a procedure must be drawn up for this, which must be approved by the Works Council (OR) in the Netherlands. In the Netherlands, the speak-up/whistleblower regulation must also be approved by the Works Council.

The speak-up procedure can be rolled out by a member of senior management, preferably a member of the Executive Board (C-level), followed by messages from local CEOs and/or department managers facilitated by Compliance. Middle management can further elaborate on local differences due to requirements from local legislation, such as data privacy legislation, right of consent by the Works Council, limitation of the categories of incidents that can be reported, etc.

Anonymity and non-retaliation are emphasized. It is good practice to mention the speak-up procedure for every compliance communication and every compliance training (face to face training, online training or webinar training). During the training sessions of the compliance professional, for example, he explains how the scheme works, how the external service provider guarantees the anonymity of the reporter, who receives the report, how it is subsequently handled, etc. Compliance, HR, Legal and Audit may be involved in the handling.



The involvement of Audit and Compliance guarantees the independent settlement. Some organisations have the Ethics Committee oversee the speak-up procedure (see tool 5. "Set up an Ethics Committee").

The naming is important. In the Netherlands, the words whistleblower regulation or hotline have a negative connotation. Therefore, it is better to call the scheme the speak-up procedure or Ethics Helpline. In the Netherlands, employees must be made aware that they may also be able to turn to the House for Whistleblowers if there is an abuse and they believe that their report is insufficiently addressed by the organization.

The roll-out can be supported by, for example, a poster campaign. A tip is to hang the posters on the inside of toilet doors. Leaflets can also be distributed. This is especially important for the employees who do not have access to computers at work.

You can also think of a video on the intranet. Here is an example of what can be used to draw attention to the 'speak-up' procedure with regard to undesirable manners:

<https://www.youtube.com/watch?v=sDF-mPHfLs&feature=youtu.be>.

Managers also need to be trained on how to handle notifications. In addition, they can be encouraged to register reports that they cannot solve directly in the central system themselves.

In the Netherlands, the internal confidential advisor integrity or undesirable manners can help employees with the question of whether or not they should make use of the scheme and how they should do so. Furthermore, the confidential advisor can mediate and coach. If necessary, you can refer to an external mediator/coach. The confidential advisor is usually not involved in finding out the truthfulness of a report; it is more of an advisory and mediating role for the benefit of the reporter.

Compliance and/or Audit often coordinates the scheme. As soon as a report comes in, reporters are immediately informed, at least within 24-72 hours, that their report has been received, is being investigated and that it will be returned to shortly. Or an answer is given directly to a question. Anonymous reporters may be asked to log in to the system regularly to see if the investigator has additional questions for the reporter (this must be facilitated by the external service provider). HR often also has an important role.

It is important that the reporter, the management and the organisation are informed about the outcome of the investigation. This increases confidence in the scheme and has been further elaborated in tool 29. "Ensure proper handling of incident reports". In the Netherlands, there is a legal obligation to inform the Works Council at least annually in general terms.

The Compliance Professional monitors the non-retaliation policy. There may be no retaliation against the reporter (the whistleblower).



Actors

Executive Board, (local) CEOs, global, regional and division compliance professionals, Marketing and Communication department. Hr, Audit and Legal are also involved in the investigation and handling of reports and, where necessary, external law firms and forensic investigators. Possibly also the local authorities, if incidents (have to) be reported there.

Where appropriate, the local data protection authority has been informed about the existence of the scheme and, where necessary, permission has been requested for the processing and possibly. export of personal data.

In some cases, e.g. in the Netherlands, the Works Council must agree to the whistleblower regulation and the investigations procedure.

Techniques

Use of a third-party service provider regarding the whistleblower system is essential to ensuring anonymity. During the roll-out, it is wise to make use of the expertise of the Marketing & Communication department.

Bring attention again and again at every opportunity.

Make sure that independent functions (Audit, Compliance) are involved that e.g. (partly) report to the Supervisory Board or the Audit Committee.

By means of a survey, it can be checked whether employees know and trust the scheme.

Role Compliance Professional

Overall coordination, information, training, communication, follow-up, analysis and reporting. In some cases also investigating the report.

Footnote 1: See NavexGlobal 2016 Ethics & Compliance Hotline benchmark report, p.14