



National
Psychotrauma
Centre

Whistleblowers regulations

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Whistleblowers regulations ARQ

Preamble

With the whistleblowers' regulations based on the model regulations of the affiliated organisations in the healthcare sector, which has been slightly modified in parts and translated to ARQ's situation, ARQ implements Article 2.5.2. of the latest version of the Healthcare Governance Code (Governancecode Zorg) that has been in force since 1 January 2022.

The Whistleblowers' regulations ensures that ARQ's handles any (suspected) abuse with due care. Pursuant to these regulations, persons reporting a (suspected) abuse who act in good faith are given protection. For ARQ, a facility for reporting a (suspected) abuse is an important instrument for taking social responsibility if necessary.

Good regulations also contributes to an open and safe organisational culture in which employees feel involved in and responsible for their organisation. ARQ aims to contribute to a pleasant and honest working environment.

Based on the Dutch Works Councils Act WOR, the Works Council has a right of consent with regard to these regulations. In the final provisions in article 10 attention is given to the approval from the Works Council and the implemented governance.

These regulations are also in line with the Dutch Whistleblowers Protection Act, which for the most part entered into force on 17 February 2023.

Article 1: Definitions

For the purposes of these regulations, the following definitions apply:

1. *adviser*: the adviser is any natural person who enjoys the trust of the person reporting and who, by virtue of his profession or office, is subject to a duty of confidentiality with respect to the issue reported;
2. *Advisory Department of the Whistleblowers Authority*: the advisory department of the Whistleblowers Authority, referred to in Article 3a, second paragraph of the Whistleblowers Protection Act;
3. *Investigation Department of the Whistleblowers Authority*: the investigation department of the Whistleblowers Authority, referred to in article 3a, third paragraph of the Whistleblowers Protection Act;
4. *trade secret*: trade secret as referred to in Article 1 of the Dutch Trade Secrets Act;
5. *third party involved*:
 - a. third party connected to a person reporting who may be disadvantaged by the person reporting's employer or a person or organisation with whom the person reporting is otherwise connected in a work-related context, or
 - b. legal entity owned by the person reporting, for which the person reporting works or with which the person reporting otherwise has a work-related connection;
6. *competent authority*:
 - a. the Consumer and Market Authority (ACM);
 - b. the Financial Markets Authority (AFM);
 - c. the Dutch Data Protection Authority (AP);
 - d. De Nederlandsche Bank N.V. (DNB);
 - e. the Whistleblowers Authority;
 - f. the Dutch Healthcare Authority (NZA);
 - g. the Authority for Nuclear Safety and Radiation Protection (ANVS),
 - h. organisations and administrative bodies designated by order in council or ministerial regulation.
7. *Authority*: the Whistleblowers Authority as referred to in Article 3 of the Whistleblowers Protection Act;
8. *person reporting*: a natural person who reports or discloses a (suspected) abuse in the context of his or her work-related activities;
9. *report*: report of a suspected abuse;
10. *reporting channel*: the route through which and the officer or body to which the person reporting can make a report of a suspected abuse;
11. *abuse*:
 - a. a breach or risk of a breach of Union law, or
 - b. an act or omission as a result of which the public interest is at stake because of:
 - a violation or risk of violation of a statutory provision or internal rules that constitute a concrete obligation and that have been adopted by an employer pursuant to a statutory provision, or
 - a danger:
 - to public health;
 - to the safety of persons;
 - of environmental degradation or;

- to the proper functioning of the public service or an enterprise as a result of improper acts or omissions.

The public interest is in any case at stake if the act or omission does not merely affect personal interests and there is either a pattern or structural character, or the act or omission is serious or extensive;

12. *follow-up*: action taken by an employer or competent authority to verify the accuracy of the allegations made by the person reporting and, if necessary and to the extent authorised, to conduct further investigations or take action;
13. *Executive Board*: the person(s) appointed as (member/members of) the board of the (healthcare) organisation;
14. *Supervisory Board*: the persons appointed as members of the supervisory board of the (healthcare) organisation
15. *Directive*: Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (OJEU 2019, L 305);
16. *violation of Union law (European Union law)*: act or omission that
 - a. is unlawful and relates to European Union legislation and policies falling within the material scope referred to in Article 2 of the Directive; or
 - b. undermines the purpose or application of the rules contained in European Union legislation and policies falling within the material scope referred to in Article 2 of the Directive; examples of violations of European Union law could include failure to comply with certain European directives or regulations in the area of:
 - freedom of movement of persons and provision of services, including discrimination based on nationality;
 - freedom of movement of goods and rules for the protection of consumer product safety, product conformity and the environment;
 - internal market rules, including rules on competition and state aid;
 - human rights and the rule of law, including protection of privacy and personal data and security of network and information systems;
 - compliance with European Union law by national governments, including lack of implementation of European directives and regulations.
17. *suspected abuse*: the suspicion of a person reporting that there is an abuse within the organisation in which the person reporting works or has worked, or at another organisation if he has come into contact with that organisation through his/her work, insofar as the suspicion is based on reasonable grounds arising from the person reporting's knowledge gained at his/her employer or arising from the person reporting's knowledge acquired through his/her work at another company or organisation;
18. *confidential adviser*: the person appointed by the Executive Board to act as such for the (healthcare) organisation and concerning whom it has been made known internally that he or she acts as such; this may be an internal and/or external confidential adviser;
19. *employee*: a person who performs work under an employment contract or a public-law appointment or a person who otherwise performs work for a remuneration in a subordinate relationship on behalf of a (healthcare) organisation
20. *employer*: the person who has or has had work performed under an employment contract or a public-law appointment, or the person who has or has had work performed otherwise than in the context of an employment relationship;

21. *work-related context*: future, current or past work-related activities in the public or private sector through which, regardless of the nature of that work, individuals may obtain information about abuses and where those individuals may face disadvantage as referred to in Article 8(2) if they reported such information.

Article 2: Information, advice and support for the person reporting

1. The person reporting may consult the confidential adviser about a suspected abuse and be represented by this person if he so wishes.
2. With regard to a suspected abuse, the person reporting may request information, advice and support from the confidential adviser. The confidential adviser acts with authority and credibility, and in that capacity is independent of (the management of) the (healthcare) organisation.
3. With regard to a suspected abuse, the person reporting may ask the Advisory Department of the Whistleblowers Authority for information, advice and support regarding a suspected abuse.
4. The confidential adviser can only act as such if the confidential adviser is not involved in the facts or circumstances described in the report.
5. In deviation from paragraphs 1 to 4, the person reporting may seek confidential advice in the reporting process from a natural or legal person in a work-related context, whose advice is confidential.
6. In deviation from paragraphs 1 to 4, the person reporting may be assisted by an adviser who can guarantee confidentiality because of professional or official secrecy (such as a lawyer). After approval by the (healthcare) organisation and on condition that the person reporting has reasonable grounds to assume that the reported information is correct at the time of the report, the (healthcare) organisation will bear the costs of this advisor.

Article 3: Report

1. A person reporting may report a suspected abuse within the (healthcare) organisation in which he or she works or has worked by:
 - a. making an internal report to the chairman of the Executive Board accordance with the internal procedure described in these regulations, or
 - b. making an external report to the appropriate authority.
2. If the report of a suspected abuse concerns the functioning and/or actions of the Executive Board, the report will be made to the chairman of the Supervisory Board of the (healthcare) organisation.
3. If the report of a suspected abuse concerns the functioning and/or actions of the chairman of the Supervisory Board, the report will be made to the Chairman of the Quality and Safety Committee of the (healthcare) organisation
4. The person reporting may also report a suspected abuse internally via the confidential adviser of the (healthcare) organisation. If the person reporting reports a suspected abuse via the confidential adviser, the confidential adviser will forward the report, in consultation with the person reporting and in the manner agreed with the person reporting, to the Executive Board or, in the event that Article 3 paragraph 2 applies, the Chairman of the Supervisory Board, with statement of the date of receipt.

5. The person reporting can choose whether or not to make this report anonymously.
6. A person reporting may make a report in the following ways:
 - a. in writing;
 - b. orally by telephone or other voice messaging systems;
 - c. at the person reporting's request within a reasonable time by means of an interview on site.
 - d. An anonymous report may be made in writing, orally by telephone or other voice messaging systems or through the confidential adviser.

Article 4: Recording an internal report

1. The person reporting makes the report in one of the ways specified in Article 3 paragraph 5 to the chairman of the Executive Board or the confidential adviser, and in case Article 3 paragraph 2 applies, the chairman of the Supervisory Board.
2. If the person reporting makes the report of a suspected abuse (in part) orally to the chairman of the Executive Board, and in case Article 3 paragraph 2 applies, the chairman of the Supervisory Board, this person will, in consultation with the person reporting, ensure that either a) a written record is made of this and this record is submitted to the person reporting for approval and signature, or b) a recording of the conversation is made in a durable and retrievable form, for which the prior consent of the person reporting has been requested.
3. The person reporting will receive a copy of the written record.
4. The chairman of the Executive Board or as the case may be of the Supervisory Board sends a confirmation of receipt to the person reporting within seven days of receipt of the report. The confirmation shall refer to the original report and the whistleblowers' regulations.
5. If the person reporting reports an abuse (partly) orally, the Executive Board or the confidential adviser¹ will, in consultation with the person reporting, ensure that a written record is made of this and this record is submitted to the person reporting for checking, correction and signature for approval.
6. The report will be recorded in a register set up for this purpose.

Article 5: Confidentiality of the report and the identity of the person reporting (and of the person to whom the abuse is attributed)

1. The Executive Board or as the case may be the Supervisory Board and/or the confidential adviser shall ensure that the information about the report is kept in such a way that it is physically and digitally accessible only to those involved in handling the report.
2. Anyone involved in a report or the investigation of a suspected abuse shall not disclose the identity of the person reporting or any information which directly or indirectly identifies the person reporting without the person reporting's explicit written consent. In addition, anyone who thereby obtains information of which that person knows or should reasonably suspect that it is confidential in nature

¹ In case Article 3(2) applies, this is the chairman of the Supervisory Board, in case Article 3(3) applies, this is the chairman of the Supervisory Board's Quality and Safety Committee.

is obliged to keep that information confidential, except insofar as disclosure is required pursuant to any statutory regulation or arises from that person's task in implementing the law. In this case, the person reporting will in principle be informed of this in advance, with a written explanation of the reasons for the disclosure, unless such information could jeopardise the related investigation or legal proceedings.

3. Information of a confidential nature shall in any case include:
 - a. information on the identity of a person reporting and of the person to whom the abuse is attributed or with whom that abuse is associated, and information that can be traced back to this, and
 - b. information on trade secrets.
4. If the suspected abuse has been reported through the confidential adviser and the person reporting has not given permission to disclose his/her identity, all correspondence regarding the report shall be sent to the confidential adviser, and the confidential adviser shall forward it to the person reporting without delay.
5. The following applies to the person who is the subject of the report:
 - a. the person's data and identity will be treated confidentially;
 - b. the person is informed of the investigation and heard during the investigation;
 - c. the person is given access to the interview report and is given the opportunity to comment on it;
 - d. the person is informed of the outcome of the investigation and given the opportunity to respond if necessary.

Article 6: Position

1. After the report has been made internally, the Executive Board or as the case may be the Supervisory Board will conduct a careful investigation into the suspected abuse reported. During the investigation, the Executive Board or as the case may be the Supervisory Board will hear the person reporting and the person to whom the abuse is attributed.
2. If the person reporting has made the report to the confidential adviser and the person reporting does not wish to disclose his/her identity, the Executive Board or as the case may be the Supervisory Board may put its questions to the person reporting in writing via the confidential adviser. The confidential adviser will forward the questions to the person reporting who may answer the questions anonymously in writing. Subsequently, the confidential adviser will forward the answers to the questions in anonymous form to the Executive Board or as the case may be the Supervisory Board.
3. Within a reasonable period of no more than three months after confirmation of receipt, the person reporting will receive further information in writing from the Executive Board or as the case may be the Supervisory Board or the confidential adviser about the assessment and, if applicable, the follow-up to the report. The position shall be formulated with due observance of the possible confidential nature of the (company) information to be provided and the applicable legal provisions such as privacy regulations.
4. In a conversation with the person reporting or confidential adviser, the Executive Board or as the case may be the Supervisory Board will explain the substantive position regarding the suspected abuse reported and give the person reporting the opportunity to respond.

Article 7: External report

1. In addition to reporting internally, the person reporting may also report a reasonable suspicion of an abuse externally to a competent authority.
2. Despite the possibility of directly making an external report, making an internal report first is by far preferable. Nevertheless, it is up to the person reporting to choose whether to report internally first or directly externally.
3. In the case referred to in paragraph 1, the report of a suspected abuse shall be made to the authority which is reasonably deemed the most appropriate for this purpose.

Article 8: Legal protection of the person reporting (prohibition of disadvantaging)

1. The person reporting a suspected abuse is protected from any form of disadvantaging during and after the reporting of a suspected abuse, provided that the person reporting has reasonable grounds to believe that the reported information is correct at the time of reporting.
2. Forms of disadvantaging, if and insofar as they relate to the reporting of a reasonable suspicion of an abuse that in any case fall under the legal protection referred to in paragraph 1, include decisions aimed at:
 - a. dismissal or suspension other than at the person reporting's own request;
 - b. a fine as referred to in Book 7, article 650 of the Dutch Civil Code;
 - c. demotion;
 - d. withholding promotion;
 - e. a negative assessment;
 - f. a written reprimand;
 - g. transfer to another location;
 - h. discrimination;
 - i. harassment, bullying or exclusion;
 - j. libel or slander;
 - k. early termination of an agreement for the provision of goods or services; and
 - l. withdrawal of a licence.
3. Disadvantaging is also taken to mean a threat of and an attempt at disadvantaging. The prohibition of disadvantaging as referred to in paragraph 1 applies during and after the handling of a report of a suspected abuse, provided that the person reporting has reasonable grounds to assume that the reported information about the suspected abuse was correct at the time of the report.
4. The prohibition of disadvantaging as referred to in paragraph 1 applies mutatis mutandis to the person who assists a person reporting, a third party involved, and an independent officer to whom the suspected abuse is reported.

Article 9: Disclosure

1. To be eligible for legal protection in the event of disclosure, the person reporting must first have made a report to the employer and/or a competent authority prior to disclosure. In addition, the person reporting must have reasonable grounds to believe that the investigation is not making sufficient progress. The person reporting can base this on the information he/she has received within a reasonable period of time about the assessment or follow-up of the report by the employer or a competent authority.
2. If the person reporting has reasonable grounds to believe that the abuse or breach may pose an imminent real danger to the public interest, that there is a risk of disadvantaging or that, if he/she were to report the abuse or breach, it is unlikely that the abuse or breach would be effectively remedied, he/she will be eligible for legal protection. In addition, as with a report, the condition always applies that the person reporting must have reasonable grounds to believe that the reported information is correct.

Article 10: Final provisions

1. These regulations shall enter into force on 22 January 2024.
2. These regulations was adopted by the Executive Board on 19 June 2023, with the approval of the Supervisory Board on 28 June 2023.
3. The Works Council gave its consent on 19 January 2024.
4. These regulations will be widely communicated and can also be found at <https://arq.org/en/more-arq/about-arq/management-and-supervision>.
5. Toke Huntjens, t.huntjens@bezemerschubad.nl had been appointed by Bezemer & Schubad as a confidential advisor for the purpose of these regulations. The confidential advisor on integrity is available for information, advice and support.