

# Tilburg University Whistleblower Regulations

## Considering that

- Tilburg University is run under the auspices of the Catholic University of Brabant Foundation (“Foundation”) (*Stichting Katholieke Universiteit Brabant*).
- The Tilburg University Executive Board attaches great importance to being able to report suspicions of misconduct. These Regulations are aimed at lowering this threshold and aims to protect employees, students, confidential advisors, and other parties involved the moment they report suspicions of misconduct.
- These Whistleblower Regulations are an elaboration of Article 2, paragraph 1 of the Dutch Whistleblowers Authority Act (*Wet Huis voor Klokkenluiders*) and the current VSNU Good Governance Code for Universities (*Code goed bestuur universiteiten*).

## Section 1 Introductory provisions

### Article 1.1 Definitions

1. For these Regulations, the following definitions apply:
  - a. **student**: the person who is enrolled as a student at Tilburg University or who was enrolled up to a maximum of one year before the date of the report.
  - b. **employee**: a person who performs work for Tilburg University based on an employment contract or otherwise, or who has made a report up to a maximum of one year before the date. Members of the Board of Governors are not employees within the meaning of these Regulations;
  - c. **person involved**: a person who is or is not in employment at Tilburg University, or was up to a maximum of 1 year before the date of the report, or who was enrolled as a student at Tilburg University or was up to a maximum of 1 year before the date of the report;
  - d. **manager**: the immediate superior of an employee;
  - e. **confidential advisor**: one of the “confidential advisors on unacceptable behavior” designated as such by the Executive Board;
  - f. **Executive Board**: the Executive Board of Tilburg University;
  - g. **Board of Governors**: the Board of the Catholic University of Brabant Foundation;
  - h. **reporting person**: the student or employee who reports a suspicion of misconduct under these Regulations;
  - i. **external third party**: an external body that, in the reasonable opinion of the person involved, is the most suitable for investigating an external report on the suspicion of misconduct. In any case, an external third party means an authority charged with the investigation of criminal offences, an authority charged with the supervision of compliance by or under any legal regulations, and any other competent authority where the suspicion of an misconduct or irregularity can be reported, for example, the Investigation Department of the Whistleblowers Authority (*Huis voor Klokkenluiders*) or a body advised by the advisors of the Whistleblowers Authority;
  - j. **whistleblowers Authority**: an external third party where a person involved can request advice on how to deal with a suspicion of misconduct and an employee can report a work-related misconduct and have it investigated;

- k. **in writing:** by post, by e-mail or by any other electronic means of communication, with which it is possible to send a message that is legible and reproducible, unless expressly stated otherwise.
2. When “he” is referred to in this policy, it is understood to mean “she” as well.

### **Article 1.2 Suspicion of misconduct**

1. A suspicion of misconduct is understood to mean a suspicion on the part of a person involved that there is a case of misconduct, within Tilburg University or at another organization if he has come into contact with that organization as a result of his work, insofar as:
  - a. the suspicion is based on reasonable grounds arising from the knowledge that the person involved has acquired at Tilburg University or arising from the knowledge that the employee has acquired as a result of his work at another company or organization, and
  - b. a public interest is at stake regarding
    - the violation of a statutory provision (e.g., an (imminent) criminal offence or (imminent) gross violation of rules),
    - a public health hazard,
    - a danger to the (social) safety of persons,
    - a risk concerning environmental damage,
    - a risk to the proper functioning of the public service or a company as a result of an improper act or omission.
2. In any case, a suspicion of misconduct is not understood to be:
  - an individual conflict in the workplace or an individual study conflict;
  - issues to which the [Tilburg University Scientific Integrity Regulations](#) apply;
  - issues to which the [Unacceptable Behavior Complaints Regulations](#) apply.

### **Article 1.3 Scope of these Regulations<sup>1</sup>**

1. A person involved who wishes to report a suspicion of misconduct does so within a period of twelve months after unenrollment as a student at Tilburg University or within a period of twelve months after termination of his work activities on behalf of Tilburg University. He can only report suspected misconduct if he became aware of the suspicion in his capacity as a student or staff member.
2. These Regulations are not intended for:
  - a. reporting personal complaints from students or staff about matters relating to their studies at work for Tilburg University;
  - b. reporting conscientious objections in connection with the performance of normal duties as a staff member and/or participation in studies on the grounds of enrollment as a student;
  - c. criticizing policy choices made by or on behalf of Tilburg University.

## **Section 2 Internal Reporting Procedure**

### **Article 2.1 Internal Reporting**

1. Unless there is an exceptional ground as referred to in Article 3.1, paragraph 2 of these Regulations or the situation as referred to in Article 2.3, the person involved who has a suspicion of misconduct reports this suspicion internally.
  - a. to his manager or thesis supervisor, or the dean of students, or

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<sup>1</sup> Appendix 1 contains an explanation of the scope of the Whistleblower Regulations.

- b. if he does not consider it desirable to report this to his manager, supervisor, or the dean of students:
    - to his Dean if he is enrolled as a student at Tilburg University or performs work on behalf of a Tilburg University School, or
    - to his Managing Director, if he performs work for a Tilburg University Division, or
  - c. if he deems it undesirable to report the aforementioned officers to the Secretary of the Executive Board<sup>2</sup>.
2. The person to whom a report is made does not disclose the identity of the person reporting without his express written consent.
  3. An internal report does not alter the person's legal obligation to report a criminal offence.
  4. A report can be made verbally and in writing. In the case of a verbal report, the person reporting and the person receiving the report jointly draw up a report describing the date and content of the report.

### **Article 2.2 Informing the Executive Board**

1. The official, referred to in Article 2.1, who has received a report records that report in writing, stating the date of receipt, has that record signed for approval by the person reporting (who receives a copy), and ensures that the Executive Board<sup>3</sup> is immediately informed of a reported suspicion of misconduct. If the person reporting does not agree to the disclosure of his identity, he does not sign for approval and does not receive a copy of the report.
2. Upon receipt of a report, the Executive Board—after an initial assessment of the admissibility in the light of Articles 1.2 and 1.3 of these Regulations—immediately starts an investigation.
3. The Executive Board sends an acknowledgement of receipt to the person reporting, unless the person reporting has not consented to the disclosure of his identity.

### **Article 2.3 Suspected Misconduct with Regard to (a Member of) the Executive Board or Board of Governors**

1. In the event of a suspicion of misconduct involving the Executive Board or one of its members, the person involved reports the suspicion directly to the Chair of the [Board of Governors](#). As much as possible, the Board of Governors deals with a report received in accordance with the provisions of these Regulations, whereby “the Executive Board” should read “the Board of Governors” instead.
2. In the event of a suspicion of misconduct involving the Board of Governors or one of its members, the person involved shall report this suspicion directly to the Chair of the Board of Governors. The Chair shall, as far as possible, deal with an incoming report in accordance with the provisions of these Regulations, whereby in the relevant provisions “the Executive Board” should read “the Chair of the Board of Governors” instead.

### **Article 2.4 Position of the Executive Board**

1. Within a period of twelve weeks from the moment of the internal report, the person reporting or the person to whom the person involved has made the report will be informed in writing by or on behalf of the Executive Board of a substantive position regarding the reported suspicion of misconduct. The steps to which the report has led will be indicated.
2. If the position cannot be given within twelve weeks, the person reporting or the person to whom the person involved has submitted the report will be informed of this by or on behalf of

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<sup>2</sup> A written notification is sent directly to the Secretary of the university if the envelope mentions the name and position of the Secretary with the addition “confidential and personal.”

<sup>3</sup> In other words, the manager reports directly to the Executive Board, not via the Dean or Director.

the Executive Board, indicating the period within which he can expect a position.

### **Article 2.5 Engagement of the Confidential Advisor**

1. If the person involved does not consider reporting to the persons referred to in Article 2.1 of these Regulations to be desirable (yet), he may first discuss the suspicion of misconduct with one of the [confidential advisors](#) for advice before deciding whether to report it.
2. If the person involved decides, after discussion with a confidential advisor, to make an internal report, he reports this to one of the persons referred to in Article 2.1 or directly to a confidential advisor. Reporting to a confidential advisor may also take place in combination with reporting to the officers referred to in Article 2.1.
3. If the person in question chooses to report to a confidential advisor, that confidential advisor informs the Executive Board of the report in a manner and at a time agreed upon with the person involved. Paragraphs 2 and 3 of Article 2.2 apply mutatis mutandis.
4. The confidential advisor does not disclose the identity of the person reporting without his express written consent.
5. The confidential advisor has the right to refuse to give evidence.

## **Section 3 Procedure External Report**

### **Article 3.1 External Report**

1. After making an internal report, the person involved may report a suspicion of misconduct externally to or via the Whistleblowers Authority<sup>4</sup>, or to another designated external third party, only if and as soon as there is a situation in which:
  - a. he does not agree with the position of the Executive Board referred to in Article 2.4;
  - b. he considers that the internal procedure has not led to sufficient measures to remedy the suspected misconduct;
  - c. he has not received a position from the Executive Board within the period referred to in Article 2.4;
  - d. the period referred to in Article 2.4, paragraph 2 is unreasonably long in view of all the circumstances of the case, and he has objected to this.
1. Contrary to the provisions of the previous paragraph, the person involved may report the suspicion of misconduct directly externally without prior internal reporting, only if and as soon as there is a situation in which:
  - a. the person involved may reasonably fear countermeasures as a result of an internal report;
  - b. imminent danger, where a serious and urgent public interest requires immediate external reporting, for example in case there is reasonable suspicion of a criminal offence or a serious threat to public health, safety, or the environment;
  - c. there is a legal obligation or authority to directly report externally;
  - d. there is a clear threat of embezzlement or destruction of the evidence.
2. Before submitting an external report, the person involved reports this intention in writing to the President of the Executive Board. If, due to the nature of the situation, the President of the Executive Board or the Chair of the Board of Governors cannot be informed in advance in the case of a situation as described in Article 2.3, the person involved reports that he has reported the suspicion of misconduct externally as soon as possible afterwards.

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<sup>4</sup> Only employees can report a suspicion of misconduct externally to the Whistleblowers Authority. The Whistleblowers Authority does not act as an external reporting authority for students. Students (but also staff) can consult the Whistleblowers Authority for advice on which external third party is best suited to investigate the suspicion externally.

### **Article 3.2 Content External Reporting**

1. The external report is made in a manner to be determined by the external third party.
2. The person reporting may request the external third party not to disclose his identity. He may revoke this request at any time.
3. The external third party does not disclose the identity of the person reporting without his express written consent.

### **Article 3.3 Acknowledgement of Receipt and the Investigation**

1. The external third party confirms receipt of a report of suspected misconduct to the person reporting and to the Executive Board.
2. If the external third party deems this necessary for the performance of its task, it investigates the suspicion of the misconduct.
3. The external third party may entrust the study or parts thereof to one of its members or to an expert.
4. If the external third party initiates an investigation, it is authorized to obtain all information it deems necessary for the formation of its advice from the Executive Board, employees, and students of Tilburg University and, if so desired, from third parties for the purpose of the investigation. The Executive Board, the staff member(s), the student(s), and/or the third party/parties provide the external third party with the requested information.
5. If the content of certain information provided by or on behalf of the Executive Board must, because of its confidential nature, remain exclusively at the knowledge of the external third party, this will be communicated to the external third party. The external third party secures information of a confidential nature against unauthorized access.

### **Article 3.4 Inadmissibility**

The external third party declares the report inadmissible if:

- a. the misconduct is not of sufficient weight;
- b. the person reporting does not fall under the definition of student or employee as formulated in Article 1.1 under a or b;
- c. the report does not fall within the definition of a suspicion of misconduct as formulated in Article 1.3;
- d. the person reporting did not follow the procedure referred to in Section 2 and Article 3.1, paragraph 2 is not applicable, or
- e. the person reporting has followed the procedure referred to in Section 2, but the deadlines referred to in Section 2 have not yet expired;
- f. the report to the external third party was not been made within a reasonable period of time.

### **Article 3.5 Substantive Advice Following the External Report**

1. If the external third party considers the reported suspicion of misconduct admissible, the external third party informs the person reporting and the Executive Board of the period within which its advice can be expected.
2. The external third party that deals with the content of the external report submits its findings regarding the report of a suspicion of misconduct to the Executive Board in the form of advice. The external third party sends a copy of the advice to the person reporting or the person to whom the report was made, with due observance of any confidential nature of the information provided to him.

### **Article 3.6 (Further) Position of the Executive Board**

1. Within two weeks of receiving the advice referred to in Article 3.5, the Executive Board informs the person reporting or the person to whom the person involved has made the report and the external third party in writing of its (further) position. The steps and/or measures taken as a result of the advice given by the external third party will be indicated.
2. The person reporting who has requested the external third party not to disclose his identity is informed of the further position through the external third party.
3. The Executive Board gives reasons for any (further) opinion that deviates from the advice.

## **Section 4 Legal Protection**

### **Article 4.1 Restriction Duty of Confidentiality**

The duty of confidentiality that applies to an employee does not apply if:

- he asks for advice or makes a report to the confidential advisor about a suspicion of misconduct,
- he makes an internal report to his manager, Director or Dean about a suspicion of misconduct, and
- when reporting a suspicion of misconduct to an external third party, he complies with the conditions set out in Section 3.

### **Article 4.2 Confidentiality**

1. Anyone involved in dealing with a report of suspected misconduct:
  - a. deals confidentially with the report of and information about the suspicion;
  - b. does not disclose the identity of the person reporting without his express written consent.
2. Unless otherwise stipulated in these Regulations, no information is provided to third parties within or outside Tilburg University without the permission of the Executive Board. When providing information, the name of the person reporting is, insofar as reasonably possible, not mentioned and the information is provided in such a way that the anonymity of the person reporting is guaranteed as much as possible.
3. The Executive Board ensures that the information about the report is stored in such a way that it is only accessible to those who are necessarily involved in the handling of the report.

### **Article 4.3 Legal Protection**

1. A person involved who, with due observance of the provisions of these Regulations and in good faith, has reported a suspicion of misconduct will not be disadvantaged in his (legal) position in any way as a result of the reporting.
2. The confidential advisor, the manager, the dean of students, and the person involved or a third party who are heard in the context of, provides documents to, or otherwise cooperates in the investigation of a suspicion of misconduct are not disadvantaged in their (legal) positions in any way as a result of acting as such under these Regulations.
3. Adverse consequences mean, in any case, decisions regarding:
  - a. granting unsolicited dismissal;
  - b. the non-renewal of a fixed-term employment contract;
  - c. the failure to convert a fixed-term employment contract into an employment contract of indefinite duration;
  - d. being transferred to another position or organizational unit;
  - e. taking disciplinary action;
  - f. withholding a salary increase, occasional remuneration, or granting allowances;

- g. withholding promotion opportunities under labor law;
  - h. rejecting a permit application;
  - i. unenrolling or refusing to enroll as a student or PhD candidate;
  - j. not being admitted to a course, study unit or PhD (program), and
  - k. suspending or taking other disciplinary measures as a result of which a student is unable to attend or take exams,
- to the extent that these decisions are taken on the basis of a report of a suspicion of misconduct by the person involved.
4. The Executive Board ensures that the person reporting and the persons referred to in paragraph 2 of this Article who are involved in the handling of a report are not adversely affected by the report in any other way in the performance of workactivities for or following a study program at Tilburg University.

#### **Article 4.4 Preventing Harm to the Person Involved**

1. The confidential advisor points out to the person involved the risks of prejudice that are present or may occur. The confidential advisor and the person involved discuss which measures can be taken to prevent or counteract any prejudice. The confidential advisor writes a report of this discussion and, after approval by the person involved, sends it to the Executive Board.
2. The Executive Board ensures that the necessary measures are taken.

#### **Article 4.5 Internal and External Investigations into Prejudice to the Person Involved**

1. A person involved who believes that he has been prejudiced in connection with reporting a suspicion of misconduct may request the Executive Board to investigate the way in which he is treated within the organization.
2. The persons referred to in Article 4.3, paragraph 2 of these Regulations may also request the Executive Board to investigate the way in which they are treated within the organization.
3. The person involved may also request the external third party referred to in Article 1.1(i) to investigate the manner in which the Executive Board, the Dean or Director, manager, or dean of students behaved towards him in connection with reporting the suspicion of misconduct.

### **Section 5 Final Provisions**

#### **Article 5.1 Entry into force**

These Regulations enter into force on 1 November 2019 and replace the preceding Tilburg University Whistleblower Regulations, which entered into force on 1 July 2014.

#### **Article 5.2 Official Title**

These Regulations can be cited as the "Tilburg University Whistleblower Regulations."

## **Appendix 1 Explanation of the Scope of the Tilburg University Whistleblower Regulations**

Whistleblowing can be described as the disclosure by an employee or student of (suspected<sup>5</sup>) misconduct, which take place under the responsibility of Tilburg University and in which a major public interest is at stake. The rules contain an exhaustive description of when there may be a suspicion of misconduct, which is such that it is in the public interest. This includes, among other things, misconducts at Tilburg University that pose a danger to public health or misconducts in which the public interest is at stake due to an (imminent) gross violation of statutory regulations by Tilburg University.

The Whistleblowers Regulations do not cover individual labor or study conflicts. The Regulations are therefore not intended for reporting personal complaints from students or staff about matters relating to their studies at or work for Tilburg University. Moreover, the Regulations are not intended for reporting conscientious objections in connection with the performance of normal duties as an employee and/or participation in studies as a student. The Whistleblowers Regulations are also not intended for expressing criticism of policy choices made by or on behalf of Tilburg University.

In addition, there are a number of regulations that may take precedence over the Whistleblowers Regulations. The [Unacceptable Behavior Complaints Regulations](#) deals with issues of unacceptable behavior such as (sexual) harassment, aggression and violence, and discrimination. The [Tilburg University Scientific Integrity Regulations](#) applies to potential violations of scientific integrity. The Schools' [Rules and Guidelines of the Examination Boards](#) prevail in matters concerning examinations.

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<sup>5</sup> If there is a suspicion, this suspicion must be based on reasonable grounds arising from the whistleblower's own knowledge.