

Handling of whistleblowing and fraud investigation at Belgian federal level



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AGENDA

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- ❖ Forensic Activities of the Federal Internal Audit
- ❖ Existing Whistleblowers law
- ❖ The Impact of European Directive 2019/1937 on the Belgian Federal Governmental Sector
- ❖ Position of Federal Internal Audit on Future Development
- ❖ How to prepare?



Forensic Activities of the Federal Internal Audit

- The Royal Decree 2016.04.05 (“Establishment of the Federal Internal Audit service”) establishes “forensic audit activities” as part of Federal Audit’s mission
- Started performing forensic investigations in 2018
- Has a dedicated forensic section (2 auditors)
- Which performs forensic investigations
 - ❖ *at the demand of ministers/senior civil servants;*
 - ❖ *at its own initiative following complaints by civil servants/citizens (through website portal)*
 - ❖ *Indication of irregularities sprouting from internal audits*



Forensic Activities of the Federal Internal Audit

- A forensic investigation can be performed in an organisation within the remit of the Federal Internal Audit when:
 - ❖ *there are indications of professional and/or criminal misconduct;*
 - ❖ *the potential professional and/or criminal misconduct threatens a non-trivial interest;*
 - ❖ *there is a reasonable chance that the potential professional and/or criminal misconduct can be investigated with the means of a forensic investigation.*
- So far 20 investigations have been performed – 2 investigations are presently ongoing



Forensic Activities of the Federal Internal Audit

- Always notification of the Federal Audit Committee at start of investigation
- Qualified personnel i.e. Registered Forensic Auditor → Competent-independent- impartial (member IFA – professional Association forensic auditors Belgium)
- Strict confidentiality is maintained
- Report with the investigation's findings only disclosed to
 - ❖ *the most senior civil servant responsible for the department in which the investigation was carried out;*
 - ❖ *the minister responsible for the department in which the investigation was carried out;*
 - ❖ *Federal Audit Committee*



Forensic Activities of the Federal Internal Audit

- Restricted to an administrative investigation (no criminal investigative powers)
- If criminal implications report to Prosecutor's Office/Central Service for Combatting Corruption
- Based on Article 29 of the Code of Criminal Procedure, any civil servant who learns of a crime or malpractice (for example: corruption) in the performance of his duties is obliged to immediately inform the public prosecutor of it and provide him with all information, reports and deeds relating to it.



Existing Whistleblowers law

Law 15 September 2013
(Whistleblowers law) applies :

“reporting of breaches of integrity
in the federal government by its
civil servants”

Each fraud is an integrity breach

Accomplishments:

- Clear definitions of an integrity breach
- setting up internal and external reporting channels
- Clear procedure for reporting the integrity breach and performing the investigation
- Protection for whistleblowers



The Impact of European Directive 2019/1937 on the Belgian Federal Governmental Sector

- As of yet, as far as the Federal Governmental Sector is concerned Directive 2019/1937 is still to be implemented into Belgian law
- The federal government has in a first reading accepted a proposal for a law to be introduced by the government before the federal parliament
- This proposal is currently being amended in the light of advice by the legislative section of the Council of State -> still a fair amount of uncertainty



The Impact of European Directive 2019/1937 on the Belgian Federal Governmental Sector

- What is already clear:

- ❖ *external reporting will be handled by the federal ombudsman;*
- ❖ *all the different entities of the federal public sector can decide whether they want to set up their own internal reporting mechanisms **OR** they can choose to use the Federal Internal Audit as the internal reporting authority*
- ❖ *if they have no internal reporting mechanism -> the Federal Internal Audit **is** the internal reporting authority;*
- ❖ *Federal Audit is always internal reporting authority for ministerial policy cells.*

- What is still unclear :

- ❖ *will an executive instrument impose minimum quality benchmarks for internal reporting mechanisms?*
- ❖ *will an executive instrument create a right for the Federal Internal Audit to be informed about investigations or to unilaterally take over investigations.*



Position of Federal Internal Audit on Future Development

- The proliferation of independent internal reporting mechanisms in the different entities of the federal public sector is to be avoided
- Transparency and professionalism are better guaranteed with a certain degree of centralization
- Ideally a solution can be found in which entities have internal reporting mechanisms which serve as a filter
- Actual investigations are referred to the Federal Internal Audit



How to prepare?

- We are expanding the Forensic team => growth is already planned up till at least 4 persons (staff cadre)

! Difficulty to correctly estimate the workload in the future : how many notifications can we expect.

- We will develop a performant reporting system accessible via our website
 - ❖ *Notifications must be dealt with anonymously*
 - ❖ *Notification should be possible orally or in writing*
 - ❖ *An acknowledgement of receipt of the report to the reporter, within seven days of such receipt;*
 - ❖ *A reasonable time to provide feedback, not exceeding three months after the acknowledgement of receipt*
 - ❖ *securely protect the confidentiality of the identity of the reporter and of any third parties*
 - ❖ *unauthorised persons cannot have access*



Thank you for
your attention!



Questions?

