*Compromise amendment on Article 13*

*Covering AM 49, 50, 51, 52, 53, 54 (Rapporteur), 70, 71 72, 73, 74 (EMPL), 68, 69, 71, 72 (ECON), 430 (Chrysogonos), 432 (Rapporteur), 433 (Cavada), 434 (Chrysogonos), 435, 436, 437 (Durand), 438 (Didier), 439 (Voss), 440 (Durand), 441 (Ferrara), 442 (Didier), 443, 444 (Durand), 445 (Chrysogonos), 446 (Dzhambazki), 447 (Cavada), 448 (Chrysogonos), 449 (Durand), 450 (Voss), 452(Voss), 454 (Didier), 455 (Cavada), 457 (Voss), 458 (Didier), 460 (Didier), 461 (Didier), 463 (Regner)*

**Conditions for the protection of reporting persons**

1. A person reporting internally and/or externally shall qualify for protection under this Directive provided he or she has reasonable grounds to believe that the information reported was true at the time of reporting and that this information falls within the scope of this Directive***.***

2. A person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported **~~externally~~** in accordance with the conditions set out in paragraph **~~2~~ *1***.

3. **A person publicly disclosing information on breaches falling within the scope of this Directive** **shall qualify for protection under this Directive** where:

a) he or she first reported internally **and/**or externally in accordance with Chapters II and III and paragraph 1 of this Article, but no appropriate action was taken in response to the report within the timeframe referred to in Articles 5(1)(d), and 9(1)(b); or

b) ***he or she has reasonable grounds to believe that*** he or she could not reasonably be expected to use internal **and**/or external reporting channels due, ***for instance,*** to imminent or manifest danger ***or harm*** for the public interest, or to the particular circumstances of the case, ***such as*** ***cases where reporting persons have valid reasons to believe that there is collusion between the perpetrator of the breach and the competent authority, or that relevant external authorities had directly or indirectly participated in the alleged misconduct*, *or that evidence may be concealed or destroyed***, or where there is ***a situation of urgency or*** a risk of irreversible damage.

***4a***. ***If the identity of the author of an anonymous report is revealed at a later stage, he or she shall enjoy the protection provided for by this Directive under the same conditions as a reporting persons whose identity was public knowledge when the report or public disclosure was first made.***

**Corresponding recitals**

*Compromise amendment on Recital 60*

*Covering amendments 181 (Chrysogonos), 182 (Buda)*

(60) ***The reporting persons should enjoy the protection of this Directive when they turn to one of the internal or external reporting channels, with no special conditions or hierarchy, or when they exercise their right to public disclosure. This should apply throughout the procedure, including once the procedure is over, unless there is proven to be no threat of retaliation.*** To enjoy protection, the reporting persons should ***be acting in good faith in the sense that they should*** reasonably believe, in light of the circumstances and the information available to them at the time of the reporting, that the matters reported by them are true. This reasonable belief should be presumed unless and until proven otherwise. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection ***and may indeed be held accountable under the national laws of the Member States.*** At the same time, it ensures that protection is not lost where the reporting person made an inaccurate report in honest error. In a similar vein, reporting persons should be entitled to protection under this Directive if they have reasonable grounds to believe that the information reported falls within its scope.

*Compromise amendment on Recital 61*

*Covering amendments 17 (Rapporteur), 184 (Durand), 182 (Buda), 185 (Chrysogonos), 186 (Didier)*

 (61) **~~The requirement of a tiered use of~~ *It is necessary to ensure that*** reporting channels ***whether internal or external***, **~~as a general rule, is~~** **~~necessary~~** ***are open to the reporting person by*** ***allowing the reporting person to choose the most appropriate channel depending on the individual circumstances of the case***, ***so as*** to ensure that the information gets to the persons ***or entities*** who can contribute to the early and effective resolution of risks to the public interest. **~~At the same time, some exceptions to its application are as well as to prevent unjustified reputational damage from public disclosure.~~****~~necessary,~~** **Moreover,** it is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression***, media freedom*** and ***the right to information***, whilst balancing the ***legitimate*** interest of employers to manage their organisations and to protect their ***reputation and*** interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights[[1]](#footnote-1).

*Compromise amendment on Recital 62*

*Covering amendments 18 (Rapporteur), 187 (Durand), 188 (Chrysogonos), 189 (Cavada),*

(62) **As a rule,** reporting persons **should** firstuse the internal ***or external*** channels at their disposal and report to their employer ***or to the competent authority***. ***Moreover, protection is also to*** ***be*** ***granted in cases where Union legislation allows for the reporting person to*** report ***directly to the bodies, offices or agencies*** ***of the*** ***Union, for example in the context of fraud against the Union budget, prevention and detection of money laundering and terrorist financing or in the area of financial services***.

*Compromise amendment on Recital 63*

*Covering amendments 19 (Rapporteur), 190 (Durand), 191 (Chrysogonos), 192 (Cavada)*

~~(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; that their confidentiality would not be protected; that the ultimate responsibility holder within the work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised~~~~or that urgent action is required (for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. In~~ **~~all~~** ~~such cases~~ ***~~especially but not exclusively~~***~~, persons~~ ***~~should deem~~*** ~~reporting externally to the competent authorities and, where relevant, to bodies, offices or agencies of the Union~~ ***~~as appropriate~~******~~and~~*** ~~shall be protected. Moreover, protection is also to be granted in cases where Union legislation allows for the reporting person to report directly to the competent national authorities or bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget, prevention and detection of money laundering and terrorist financing or in the area of financial services.~~

*Compromise amendment on Recital 64*

*Covering amendments 20 (Rapporteur), 193 (Cavada), 194 (Didier)*

(64) Persons making a public disclosure directly should **also qualify for protection** in cases where a breach remains unaddressed (for example, it was not properly assessed or investigated or no remedial action was taken) despite having been reported internally **and/**or externally **~~following a tiered use of available channels~~**; or in cases where reporting persons have ***reasonable*** reasons to believe that there is collusion between the perpetrator of the breach and the competent authority is reasonably suspected, ***or that relevant external authorities directly or indirectly had participated in the alleged misconduct*,** that evidence may be concealed or destroyed, or that the effectiveness of investigative actions by competent authorities might be jeopardised; or in cases of imminent and manifest danger or harm for the public interest, or where there is a risk of irreversible damage, including, inter alia, harm to physical integrity ***or*** ***where there is a situation of urgency.***

1. One of the criteria for determining whether retaliation against whistleblowers making public disclosures interferes with freedom of expression in a way which is not necessary in a democratic society, is whether the persons who made the disclosure had at their disposal alternative channels for making the disclosure; see, for instance, Guja v. Moldova [GC], no 14277/04, ECHR 2008. [↑](#footnote-ref-1)