*Compromise Amendment on Article 4 supported by Rapporteur,EPP, ECR, ALDE, Greens, GUE, EFDD*

*Covering AM 42 (rapporteur), 323 (Guteland), 324 (Chrysogonos), 327(Voss), 328 (Durand), 329 (Chrysogonos), 335 (Durand)*

**Obligation to establish internal channels and procedures for reporting and follow-up of reports**

1. Member States shall, ensure, ***in accordance with national practices***, that ***employers and other*** legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultation ***and in agreement ~~with the worker representatives and/or the trade union and/or~~*** with the social partners**~~, if appropriate~~**.

2. Such channels and procedures shall allow for reporting by employees of the entity. They **~~may~~** ***shall*** allow for reporting by other persons who are in contact with the entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d). ***These reporting channels shall be clearly defined by the entity and easily accessible both within and from outside the entity.***

3. The legal entities in the private sector referred to in paragraph 1 are the following:

a) private legal entities with 50 or more employees;

b) private legal entities with an annual business turnover or annual balance sheet

total of EUR 10 million or more;

c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under the Union acts referred to in the Annex.

3a. By way of derogation from paragraph 3 (a) and (b), Member States may exclude from the legal entities in the private sector referred to in paragraph 1 the following private legal entities:

a) private legal entities with fewer than 250 employees;

b) private legal entities with an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million

4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of risk  ***for, in particular the environment and public health***, Member States may require small private legal entities, as defined in Commission Recommendation of 6 May 2003[[1]](#footnote-1), other than those referred to in paragraph 3(c) to establish internal reporting channels and procedures.

5. Any decision taken by a Member State pursuant to paragraph 4 shall be notified to the Commission, together with a justification and the criteria used in the risk assessment. The Commission shall communicate that decision to the other Member States.

6. The legal entities in the public sector referred to in paragraph 1 shall be the following:

a) state administration;

b) regional administration and departments;

c) municipalities with more than 10 000 inhabitants;

d) other entities governed by public law.

*Compromise amendment on Article 5 supported by Rapporteur, EPP, ECR, ALDE, Greens, GUE, EFDD*

 *Covering AM 44 (rapporteur), 45 (rapporteur), 46 (rapporteur), 351(Durand), 352 (Buda), 353 (Buda), 355 (Durand), 356 (Didier), 357 (Voss), 359 (Durand), 360 (Durand), 362 (Voss), 363 (Durand), 366 (Durand), 367 (Buda), 368 (Chrysogonos), 369 (Regner)*

**Procedures for internal reporting and follow-up of reports**

1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:

a) channels for receiving the reports***, ~~including digital mechanisms~~, ~~and institutional arrangements,~~*** which are designed, set up and operated in a ***secure*** manner that ensures the confidentiality of the identity of the reporting person and of the ***facilitators*** ***and as well as of the concerned person,*** and prevents access to non-authorised staff members;

***(aa) a confidential acknowledgment of receipt of the report to the reporting person within no more than seven days of that receipt;***

b) the designation of ***an impartial*** person or department competent for following up on the reports.

c) diligent follow up to the report by the designated person or department ***and, where necessary, appropriate and timely action.***

***ca) Diligent follow up shall also be carried out as regards anonymous reporting***;

d) a reasonable timeframe, not exceeding ***two*** months ***from the acknowledgment of receipt of*** the report to provide feedback to the reporting person about the follow-up to the report.That timeframe ***may be extended to four months, where necessary due to the specific circumstances of the case, in particular where the subject of the report is of a nature and complexity such that a lengthy investigation may be required***,;

***da) , ~~to look over, examine and~~ where deemed relevant by the person or department referred to in point b, the possibility for the reporting person to be consulted and to present comments during the course of the investigation and the possibility for those comments to be taken into account; and***

e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.

2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in ***any*** **~~all~~ of** the following ways:

(a) written reports in electronic or paper format and**/or** oral report through telephone lines, ***or other voice messaging systems*,** whether recorded, ***with the prior consent of the reporting person*** or unrecorded;

(b) physical meetings with the person or department designated to receive reports,

Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in point (a) of paragraph 1 are respected.

3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports, ***provided that the confidentiality and impartiality safeguards as referred to in points (a) and (b) of paragraph 1 are complied with***. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice. ***~~These persons may, in particular, be workers’ representatives.~~***

***3a. The procedures for reporting and following up of reports referred to in Article 4 shall ensure that the reporting person or any person considering reporting has the right to be accompanied by a workers’ representative at all stages of the procedure, including during physical meetings as provided for under this Article..***

**Corresponding recitals**

*Compromise amendment on Recital 38*

*Covering amendment 157 (Niebler), 158 (Guteland)*

(38) For legal entities in the private sector, the obligation to establish internal channels is commensurate with their size and the level of risk their activities pose to the public interest. It should apply to all medium-sized and large entities irrespective of the nature of their activities, based on their obligation to collect VAT. ***However by way of derogation, Member States may exclude medium-sized entities, as defined in Article 2 of the Annex of the Commission Recommendation of 6 May 2003, as amended, from this obligation.*** As a general rule small and micro undertakings, as defined in Article 2 of the Annex of the Commission Recommendation of 6 May 2003, as amended[[2]](#footnote-2), should be exempted from the obligation to establish internal channels. However, following an appropriate risk assessment, Member States may require small undertakings to establish internal reporting channels in specific cases (e.g. due to the significant risks that may result from their activities).

***Recital on anonymity*** *supported by Rapporteur, EPP, ECR, ALDE, Greens, GUE, EFDD*

***(44a) While the intention of this Directive is not to regulate the arrangements for anonymous reporting or public disclosure, such reports may occur. The reports received using internal channels should therefore be diligently followed-up. As to reports using external channels, competent authorities should be allowed to disregard anonymous reports under the conditions provided by national law. Moreover, in cases where the identity of reporting persons is revealed, they should be eligible for protection under this Directive.***

*Compromise amendment on recital 46*

*Covering amendment 169 (Didier), 173 (Durand)*

(46) In the context of internal reporting, the quality and transparency of information provided on the follow up procedure to the report is crucial to build trust in the effectiveness of the overall system of whistleblower protection and reduces the likelihood of further unnecessary reports or public disclosures. The reporting person should be informed within a reasonable timeframe about the action envisaged or taken as follow up to the report (for instance, closure based on lack of sufficient evidence or other grounds, launch of an internal enquiry and possibly its findings and/or measures taken to address the issue raised, referral to a competent authority for further investigation) as far as such information would not prejudice the enquiry or investigation or affect the rights of the concerned person. Such reasonable timeframe should not exceed in total ***four*** months. Where the appropriate follow up is still being determined, the reporting person should be informed about this and about any further feedback he/she should expect. ***In all cases, the reporting person should be informed of the investigation’s progress and outcome. He or she should be given the opportunity to access the draft report so as to be able to comment on it, albeit with no obligation to do so. These comments may be incorporated and taken into account in the monitoring of the investigation.***

1. Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36. [↑](#footnote-ref-1)
2. Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36). [↑](#footnote-ref-2)