

Policy Document on Non-Material Enforcement Action

22 December 2022

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
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DEFINITIONS

TERM	DEFINITION
Authority or MFSA	The Malta Financial Services Authority as established by Chapter 330 of the Laws of Malta, the Malta Financial Services Authority Act.
Person/ Persons	Includes all natural or legal persons authorised by the MFSA to provide financial services or otherwise falling within the regulatory or supervisory remit of the MFSA.
Policy Document/ Policy	Policy Document on non-material enforcement action.

1. Introduction

The Malta Financial Services Authority ('MFSA' or 'the Authority') aims to ensure that Persons authorised by the MFSA to provide financial services, in or from within Malta, as well as all Persons falling within its regulatory or supervisory remit remain compliant with the applicable EU and local financial services legislation and regulatory framework. In order to achieve this aim, the MFSA has sought to strengthen its enforcement and supervisory functions through the implementation of this Policy Document.

This Policy Document sets out a regime for enforcement action which is taken by the MFSA following certain breaches of European or local legislation and regulations, and/or rules, which are objectively considered to be of an unequivocal nature.

The MFSA has identified a number of regulatory and/or legislative requirements, which if not adhered to, would unequivocally amount to a breach of the respective legislation or regulations from which the requirement emanates.

2. Purpose

This Policy Document is being issued to set out the MFSA's policy in relation to the imposition of non-material enforcement action in the form of an administrative penalty, with respect to failure to adhere to the regulatory and/or legislative requirements in relation to submissions of regulatory reporting.

This Policy Document is applicable to all Persons and with respect to matters falling within the scope of any law or regulation for the purposes of which the MFSA is the designated competent authority.

This Policy Document is applicable solely with respect to the submissions of regulatory reporting which emanate from the respective law, regulation and rulebook, as may be amended from time to time.

This Policy Document is applicable immediately upon date of publication.

3. Power to Take Non-Material Enforcement Action

Furthermore, in terms of Article 11(3) of the Malta Financial Services Authority Act (Chapter 330 of the laws of Malta ('MFSA Act'), the Executive Committee of the MFSA has, following the approval of the Board of Governors, established that non-material enforcement action, may be taken by the Chief Officer responsible for Enforcement, insofar as the enforcement action:-

- i. Relates to the submissions of regulatory reporting to the MFSA in accordance with the respective law, regulation or rulebook; and
- ii. Amounts to an administrative penalty not exceeding €30,000 for every breach or failure to adhere to a specific submission of regulatory reporting.

4. Policy Statement

4.1 Submissions to the MFSA

When a Person is required to make a submission to the MFSA in line with any requirement set out in any law, regulation or rulebook which falls within the MFSA's regulatory and supervisory remit, such submission should be made in accordance with applicable legislation or in the manner which the MFSA may specify from time to time.

4.1.1 Timely and Complete Submissions

All submissions made to the MFSA must be made in a timely manner and shall adhere to the timeframes and deadlines which are from time to time stipulated by the MFSA, or expressly set out in EU regulations, local legislation, regulations, rulebooks and any other documents which may be issued by the MFSA.

In this respect, the MFSA is under no obligation to issue reminders before or after the expiration of any deadlines relating to regulatory submissions.

Where a Person is uncertain as to how and to whom submissions are to be made, or has queries in relation to the submission, such Person should seek guidance from the MFSA in a timely manner. This should be done before the expiration of the submission deadline in order to give time to the MFSA to provide the necessary guidance.

The MFSA requires all submissions made to include all the requested or relevant information in a comprehensive and complete manner. Furthermore, the information provided should be of a good quality and it should be to the satisfaction of the MFSA. Where the MFSA deems a submission to be incomplete or of poor quality, it shall reserve the discretion to take regulatory action in terms of the applicable laws, rules and regulations.

4.1.2 Failure to Submit and Treatment of Late Submissions

Where a Person is under an obligation to make submissions of regulatory reporting, and if the MFSA is of the view that such Person has failed to make the necessary submissions within the time stipulated by the MFSA or the time expressly set out in the EU regulations, local

legislation, regulations, rulebooks and/or any other documents issued by the MFSA, the MFSA will automatically proceed with taking enforcement action.

Unless specifically required by European legislation, as a general rule, the MFSA will not be granting case-by-case extensions relating to filing deadlines which are explicitly stipulated by law, rules or regulations. The MFSA may however, on a discretionary basis, grant extensions to filing deadlines in very exceptional cases which affect a particular sector or the financial services industry in general.

4.2 Procedure for Non-Material Enforcement Action

When the MFSA is of the view that a Person, has failed to adhere to any of the requirements in relation to submissions of regulatory reporting to the MFSA, in accordance with the respective law, regulation or rulebook, the respective Person shall be notified in writing that the MFSA is minded to take non-material enforcement action in the form of administrative penalty.

The Person on whom the minded letter is served shall have fourteen calendar days from date of receipt within which to make written representations. In determining whether regulatory action is warranted or otherwise, the MFSA shall only take into consideration any substantial evidence provided by the Person which proves, to the satisfaction of the MFSA, timely and complete adherence to the respective regulatory or legislative requirement. In the eventuality that no written submissions are received by the MFSA within the stipulated timeframe or in the eventuality that the representations do not provide substantial evidence which proves, to the satisfaction of the MFSA, timely and complete adherence to the respective regulatory requirement, the MFSA will proceed with taking regulatory action.

Where a Person who is under an obligation to make submissions of regulatory reporting delegates or outsources the act relating to the actual filing of such documentation to a third party, the responsibility to ensure the timely submission of such regulatory filings shall solely remain with the former. The Person who is under the obligation to make regulatory filings shall remain liable for the payment of any penalty incurred for late filing, irrespective of whether that fault for late filing may be solely or partially attributable to the acts or omissions of any third party.

Where a Person has incurred an administrative penalty for a failure to submit regulatory reporting within the applicable regulatory deadline, the MFSA shall reserve the right to take further disciplinary action should the MFSA determine that further regulatory action is warranted. Such instances include, but are not limited to, situations whereby a Person against whom the MFSA has taken enforcement action remains in default or fails to cooperate with the MFSA. Administrative measures shall not exonerate any applicable regulatory filings. In

the case of administrative penalties imposed against a Person, the latter is still responsible to make the respective regulatory filings without any further delays.

4.3 Appeals

An appeal to the Financial Services Tribunal as set out in Article 21 of the MFSA Act shall lie from a decision taken by the MFSA to impose a penalty on a Person who is found to have failed to submit regulatory reporting within the applicable regulatory deadline.

Upon payment of the penalty, the Person would be waiving their right to appeal to the Financial Services Tribunal.

It should also be noted that the provisions of Article 16(8) of the MFSA Act Malta will apply in relation to the publication of administrative measures and penalties on the MFSA's website.

5. References

- [Malta Financial Services Authority Act \(Chapter 330 of the Laws of Malta\)](#)
- [Guidance Note on Non-Material Enforcement Action](#)

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