

09 December 2024

Circular on the Market Abuse Regulation (EU) 596/2014 ('MAR' or the 'Regulation') – Reporting of Infringements

This circular is being addressed to all market participants, particularly entities who carry out activities that are regulated by financial services regulation, and natural persons ('Market Participants').

This Circular should be read in conjunction with the Regulation (EU) No 596/2014 of the European Parliament and of the Council (hereinafter referred to as 'the Regulation'/'MAR') and the Reporting of Infringements Regulations (Subsidiary Legislation 476.04) issued under the Prevention of Financial Markets Abuse Act, Chapter 476 of the Laws of Malta (the 'Subsidiary Legislation').

In line with Article 32 of MAR and the Subsidiary Legislation, the Authority has established mechanisms to enable reporting of actual or potential infringements of the Regulation. The Authority has created a [form](#) which Market Participants can use to report an actual or potential infringement. Once the form is duly completed, it can be submitted to the Authority through dedicated communication channels available, depending on whether such submission is lodged anonymously or not. The market participants have the choice to submit the report of infringement anonymously or disclose their identity within the report. Nevertheless, the Authority encourages market participants to disclose their identity when submitting reports, to allow the possibility of follow ups.

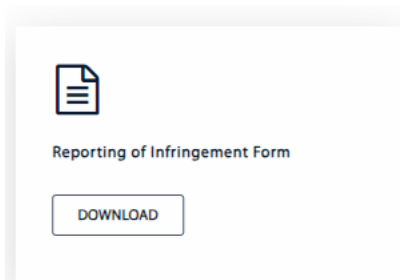
Market participants are reminded that the Authority provides appropriate protection for persons working under a contract of employment, who report infringements or are accused of infringements, against retaliation, discrimination or other types of unfair treatment at a minimum. Furthermore, protection is also extended to personal data both of the person who reports the infringement and the natural person who allegedly committed the infringement, including protection in relation to preserving the confidentiality of their identity, at all stages of the procedures without prejudice to disclosure of information being required by national law in the context of investigations or subsequent judicial proceedings.

In this respect, the aim of this Circular is to offer guidance in relation to the process of completing and submitting reports of infringements.

Stage 1: Accessing the Form

In order to access the form, the Market Participant, henceforth referred to as the reporting person, should access the following [link](#).

Alternatively, a link to the Form can be found on the MFSA's website by going through the path: *Our Work > Capital Markets Supervision*. Once the Capital Markets Supervision page is open, the reporting person will be able to see a carousel primarily featuring the 'Online Submission Portal' for PDMR Notifications on the first page and the 'Reporting of Infringement' Form on the second page.



Reporting of Infringement in terms of Article 32 (1) of MAR

As the MFSA is the designated competent authority under the Reporting of Infringement Regulations (**Subsidiary Legislation 476.04**), it is designated to establish effective mechanisms to enable the reporting of actual or potential infringements of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse ('MAR' or the 'Regulation').

Market participants who have information relating to actual or potential infringements of MAR are encouraged to submit a report to the Authority by completing the Form which can be accessed [here](#). A more in-depth explanation of the process for submitting a report of infringement may be found in the guidelines circular.

The form can be submitted to the Authority through the following dedicated communication channels:

Method	Details
Face-to-face meeting	N/A
E-mail	mar.infringement@mfsa.mt
By mail	MAR Reporting of Infringement Unit, Triq I-Imdina, Zone 1, Central Business District, Birkirkara, Malta
Through telephone (Unrecorded)	2548 5632

If a market participant would like to submit a report without disclosing his/her identity, one may choose to report the infringement by mail. In any case, however, the MFSA shall not disclose to any person, either directly or indirectly, the identity of the reporting person or reported person or any other reference to circumstances that would allow the identity of the reporting person or reported person to be deduced, unless such disclosure is made in accordance with Articles 27, 28 and 29 of MAR.

If the Reporting Person is somehow disciplined by his respective employer for having made the disclosure, the law provides for several remedies:

1. File an application to the First Hall, Civil Court for an order requiring the person who has taken the detrimental action to either remedy that action, or else to an injunction to be issued, as *per* Article 7 of the Act; or
2. Bring his claim before the Industrial Tribunal and have his right asserted if the matter concerns employment issues, as *per* Chapter 542 of the Laws of Malta; or
3. Lodge a complaint to the Office of the Ombudsman within a period of six (6) months from the date of the disciplinary action, for the office of the Ombudsman to conduct their investigation, as *per* Article 14 of Chapter 385 of the Laws of Malta.

Persons making information available to the MFSA in accordance with MAR are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such disclosure.

The form can also be accessed by going to the MFSA Website and following the path: ***Our Work > Capital Markets Supervision > Market Oversight > Market Integrity > Infringement Reporting***.

The reporting person should download this form on his/her personal device. The form will open on the device as a word document to allow the reporting person to complete the form accordingly. Once completed, the form should be saved and sent to the Authority.

Stage 2: Filling in the Form

Prior to filling in the form, the reporting person is required to read carefully the disclosures included therein, in order to have a better understanding of the reporting of infringement process and their rights and duties relating to the same.

In the first question of the form, the reporting person is requested to mark whether they would like to submit the report anonymously. In the affirmative, the reporting person should go directly to question three. On the other hand, if the reporting person would like to disclose his/her identity, he/she should complete the second question with his/her details ('name', 'surname', 'telephone number', 'email address' and 'occupation'). This information allows the Authority to follow up with the reporting person if required, in relation to possible investigations.

Please note that persons making information available to the MFSA in accordance with the Market Abuse Regulation are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such disclosure. Furthermore, the reporting person is reminded that, in line with Article 12(2) of the Subsidiary Legislation 476.04, the Authority shall not disclose to any person, either directly or indirectly, the identity of the reporting person or reported person or any other reference to circumstances that would allow the identity of the reporting person or reported person to be deduced, unless such disclosure is required in accordance with Articles 27, 28 and 29 of MAR¹.

In question three of the form, the reporting person should disclose whether the report of infringement relates to an *issuer of financial instruments, a person professionally arranging or executing transactions or other* i.e when a person trading on his personal account. Moreover, in question four, the reporting person should disclose the name of the entity being reported.

Question five of the form should be completed with the intention of including all information held by the reporting person relating to the actual or potential infringement for the Authority to get a good understanding of the infringement. Question five is further divided into sub questions (a) to (g).

In sub-question (a), the reporting person is requested to declare whether the report relates to an actual infringement or a potential infringement.

In sub-question (b), the reporting person is requested to disclose the identity of the party/ies involved in the actual or potential infringement, so the reporting person should list the person or people who has conducted or is involved in the actual or potential infringement being reported.

¹ A detailed description of the circumstances laid down by Articles 27, 28 and 29 of MAR are provided for in Annex I to this Circular.

In sub-question (c), the reporting person is requested to disclose the place and the date when the event being reported occurred, so the reporting person is expected to include the date on which the transaction has been executed and where the transaction took place i.e. on which trading venue.

In sub-question (d), the reporting person is requested to disclose the name and type of financial instrument concerned in the possible or actual infringement, so he/she is expected to indicate the nature of the instrument, i.e. Bond, Equity etc., and the name of the said instrument.

In sub-question (e), the reporting person is requested to indicate which legal obligation under MAR was infringed or which may be infringed, so the reporting person is expected to indicate which legal obligation/s from the Regulation is/are being infringed upon through the relevant transaction/.

In sub-question (f), the reporting person is requested to give a good overview of the nature of the alleged infringement, so he/she is expected to provide a detailed explanation regarding how the mentioned transaction/s are constituting an infringement of the Regulation.

To conclude question five, sub-question (g) requests the reporting person to include any other information in relation to the actual or possible infringement which have not been included in the prior sub-questions and may be relevant to the Authority's assessment.

In question six of the form, the reporting person is requested to provide any documentation/extracts which can substantiate the reported infringement. The reporting person is required to choose between the following options:

- *'Not Applicable'* if there are no documentation/extracts which can be provided as proof;
- *'I am enclosing documents to support the report'* if the reporting person holds the documentation and will be providing it to the Authority together with the form; and
- *'I know of the existence of the documents that support this report'* if the reporting person cannot provide the documentation/extracts and can direct the Authority to how it may obtain such documentation/extracts.

For the final question of the form, question seven (a) asks whether the reporting person has ever reported the matter to other authorities and in the affirmative, to disclose when and to which authority the report was made. Subsequently, sub-question (b) asks the reporting person whether he/she had ever reported this matter internally to his/her organization and in the affirmative, to include the 'name', 'surname' and 'position' to whom the infringement was reported.

Stage 3: Sending the Form to the Authority

The Authority provides a number of ways how the infringements may be submitted. The reporting person wishing to report an infringement may do so as follows:

1. **Orally** – either by phoning the Authority on +356 2548 5632. The reporting person shall provide detailed information on the infringement being reported, similar to the information required in the Reporting of Infringement Form;
2. **In Writing** – through the form provided on the MFSA website. This form needs to be duly filled in and together with any documentation/extracts, sent to the MFSA via email on mar.infringement@mfsa.mt or by post to the MFSA's address at *Triq I-Imdina, Zone 1, Central Business District, Birkirkara, Malta*, addressed to the MAR - REPORTING OF INFRINGEMENT UNIT;
3. **Through a Meeting** – a reporting person may request a physical or virtual meeting with the MAR - Reporting of Infringement Unit at the MFSA. In such case, the information which shall be required shall be the same as that which is required by the Reporting of Infringement Form. To request such meeting, the reporting person shall call the Authority on +356 2548 5632 or send an email on mar.infringement@mfsa.mt

The choice of communication channel will also depend on whether the Reporting Person would like to submit the report anonymously. In the affirmative, the Reporting Person should submit the Report to the MFSA by post. Otherwise, if the Reporting Person has no issue with disclosing his/her identity he/she can submit the report using any method of communication of their choosing.

Stage 4: Receipt of Acknowledgement and Reference Number

When the Infringement Report reaches the Authority, the latter shall promptly acknowledge receipt. Unless the Reporting Person is reporting anonymously, so no contact information is provided, explicitly requests otherwise or if the Authority reasonably believes that acknowledging receipt of the report shall jeopardize the protection of the reporting person's identity.

Within the acknowledgement email/letter, the reporting person will also be provided with a reference number which will need to be quoted in the event that further communication is exchanged between the Authority and the reporting person relating to such infringement. The reporting person should mention the reference number if he/she needs to submit any clarifications or additional information relating to the reported infringement. Hence, it is of utmost importance that the reporting person keeps on file a copy of this email.

Stage 5: Request Feedback

In those cases where the MAR - Reporting of Infringement Unit feels that the report made is too vague, needs more clarification, or is otherwise insufficient for the disclosure to escalate further, the Unit may contact and request from the reporting person further information on the matter when the reporting person disclosed their identity. In the case when the report is made anonymously and further details are required but cannot be attained, such disclosure shall be logged into the Authority's internal database and archived. In this respect, reporting persons are encouraged to disclose their identity when submitting such reports in order to allow for feedback, when applicable. Reporting persons are also reminded, as aforementioned, that when reporting an infringement, the Authority ensures that protection of personal data of the reporting person and the reported person is provided.

Annex 1

Article 27

Professional Secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2 and 3.
2. All the information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings.
3. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.

Article 28

Data Protection

With regard to the processing of personal data within the framework of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC. With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001.

Personal data shall be retained for a maximum period of five years.

Article 29

Disclosure of Personal Data to Third Countries

1. The competent authority of a Member State may transfer personal data to a third country provided the requirements of Directive 95/46/EC are fulfilled and only on a case-by-case basis. The competent authority shall ensure that the transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State.
2. The competent authority of a Member State shall only disclose personal data received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained express agreement from the competent authority which transmitted the data and, where applicable, the data is disclosed solely for the purposes for which that competent authority gave its agreement.
3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with the national laws, regulations or administrative provisions transposing Directive 95/46/EC.