

REPORTING

Ministry for European Funds and Implementation of the Electoral Programme

1. Background

In September 2013, the Maltese government implemented the Protection of the Whistleblower Act, 2013: an act to make provision for procedures that provide protection to persons who report improper practices and wrongdoings at the workplace, in both the private sector and the public administration.

The Directive – (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law – was adopted on 23 October 2019 and entered into force on 16 December 2019. This has led to the amendment of the Protection of the Whistleblower Act (CAP 527 of the Laws of Malta) which came into force in December 2021.

2. Definitions

a. Definition of whistle-blower

In line with the Act, a whistle-blower is a person working within the private or public sector who, through a “work-related context”, has acquired information regarding a breach of law and who, in the absence of special rules to protect them, is likely to face retaliation if they report it. This applies to employees as defined under the Act.

b. External disclosure, Internal disclosure and Public disclosure

The whistle-blower/reporting person may submit an internal disclosure (i.e. within the organisation), but also an external disclosure provided that there are reasons which are in line with those listed under Article 16 of the Act. In this case, the external disclosure should be reported in line with OPM Circular No. 18/2013¹. In addition, a public disclosure can also be submitted within the terms and conditions as provided under Article 18 A of the Act.

3. Internal disclosure within MFI

The aim of this document is to provide, to those who intend to report an offense or anomaly with clear operational information on the Ministry’s internal procedure about the subject, contents, recipients and methods of transmission of the reports, as well as with reference to the forms of protection offered to him by law.

¹ <https://intra.gov.mt/en/Circulars/Pages/opm-no.-18-2013-implementation-of-the-protection-of-the-whistleblower-act.aspx>

The objective is to encourage the reporting of improper actions by providing the necessary assurances on the confidential and secure reporting channels established within the MFI and helping them to raise concerns without fear of retaliation and ensuring anonymity.

This internal procedure cannot in any way override the general principles included in the above mentioned Act and any subsequent amendment.

4. Reporting channels (phone numbers or email) for receiving and following-up on the reporting

In line with Article 12 of the Act, internal reports to MFI can be made through a physical meeting; in writing; orally through telephone lines or other voice messaging systems. Within the MFI, the contact details of the Whistleblowing Reporting Officer/s (WRO) are outlined below:

- Whistle-blower Reporting officer: Mr Matthew Cassar
- Contact phone number/Voice Message: 25552124
- Contact email: whistleblower.mees@gov.mt

The WRO is responsible for receiving internal disclosures and addressing the concerns raised by the whistle-blower accordingly in a secure manner that ensures that the confidentiality of the identity of the whistle-blower and any third party mentioned in the disclosure is protected and prevents access thereto by non-authorised staff members.

Any decision taken by the WRO in relation to the reported complaint and follow-up reports will be documented and stored within the same confidential and secure reporting channels as used for the report.

5. What should be reported?

Issues which should be reported under this policy are referred to in improper practices as defined by the Act, which include actions relating to failure to comply with any legal obligation or with any legal obligation emanating from the laws on public procurement, financial services and anti-money laundering, product safety, transport safety, nuclear safety, food safety, animal welfare, consumer protection and data protection; actions whereby health and safety is likely to be endangered or the environment is likely to be damaged, and other actions whereby a corrupt practice, a criminal offence, a miscarriage of justice, bribery, has occurred or is likely to occur.

Any concern of improper practices by an employer or third party within the Ministry chain must be a genuine concern: thus, the protection does not apply to an employee who knowingly discloses information which he knows or ought to reasonably know is false. Disclosures on improper practices shall be protected in so far as the whistle-blower had reasonable grounds to believe that the information on breaches disclosed was true at the time of disclosure. However, it does not matter if the whistle-blower

does not have conclusive evidence of the concern occurring, or if he/she is in fact mistaken and the concern has in fact not occurred – as long as he/she reasonably believes on what is reported.

Employees will also need to be mindful of the distinction between a whistleblowing concern and a grievance. Grievances are concerns about an individual's personal circumstances and should be addressed through the HR policies. Whistleblowing matters are those that are about unlawful conduct, financial malpractice or dangers to personal health or safety or the environment as outlined above.

6. How to raise a concern

The reporting person can first raise the concern with its own superior. If after doing so, he/she would also like to raise the concern with the WRO as an independent body, he/she is welcome to do so. However, there is no obligation to report the concern internally to the own employer first before informing the WRO.

Upon request by the reporting person, the concern can be also raised by means of a physical meeting which will be schedule within a reasonable timeframe in line with the Act.

When submitting the request, the WRO is obliged to operate in a secure manner that ensure confidentiality of the identity of the reporting person and any third party mentioned in the disclosure and to prevent access thereto by non-authorised staff members. The information provided will be recorded securely and in a confidential manner.

The reporting person does not have to have conclusive evidence to make his/her complaint: it is recommended to rather report concerns at an early stage than wait until there are ready available proofs. The reporting person is, encouraged to provide contact details so that WRO can provide with feedback of the issue, and ask for more information at a later stage if required to help progress the review.

7. How the WRO will respond

The WRO will respond to any concern professionally, independently and in line with the provisions of the Act. The first step is to acknowledge the receipt of the internal disclosure within 7 days of receipt.

Following the submission of the report, the WRO will establish whether the concern:

- fulfil the requirements of the Protection Act, and
- whether the WRO is the most appropriate body to consider this concern.

Following a positive outcome of the above, the WRO will proceed with the assessment of the case so to identify the competent Authority which will be responsible to further investigate and/or rectify the improper practice.

Should the WRO deem that the report is not in line with Act and/or considers that he/she is not the appropriate body, he/she will refer to the reporting person to the relevant authority when possible.

The WRO will provide feedback to the reporting person within a reasonable time, not exceeding three (3) months from the acknowledgment of receipt.

In the event that an internal disclosure leads to the detection of a crime or contravention, the reporting officer may refer the report to the police for investigation.

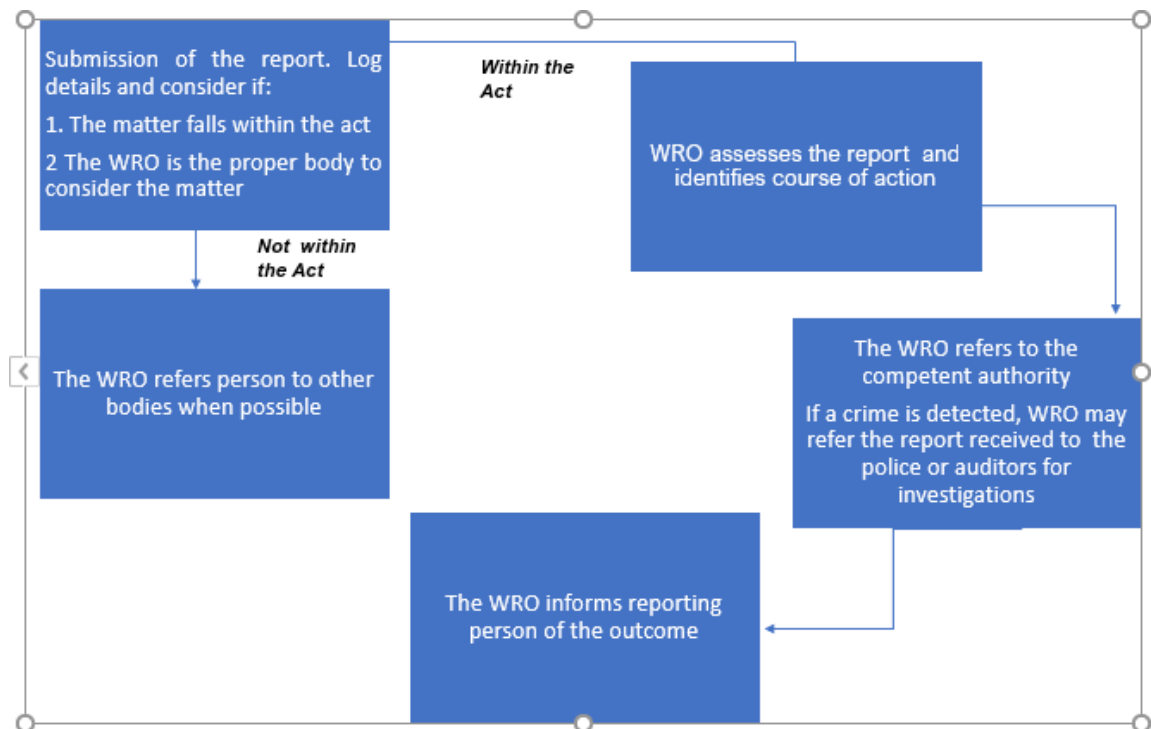
In all cases, the WRO must inform the reporting person of any action taken, the status of the internal investigation and its outcome within the terms indicated above.

In cases where the reporting person feels that the whistleblowing-reporting officer is not the appropriate channel to be used, the reporting officer can proceed in line with article 14 of the Act or proceed with an external disclosure.

NOTE:

- The WRO is bound to keep record of every report received in terms of the provisions of the Act, as well as other applicable laws and of the actions taken.
- All processing of personal data carried out in relation to any disclosure will be carried out in terms of the data protection laws, including the GDPR

8. Summary of how the WRO will deal with your concern



9. Protection of the reporting person

The Act has listed the measures for the protection of a whistle-blower especially under its Part II. The aim is to encourage witnesses to wrong doing to speak up and to expose suspicions of illicit or unethical practices. Whistle-blower protection is a key tool in any meaningful effort to combat corruption.

In line with the Act, for a report to be protected the reporting person must act in good faith and reasonably believe that the information being reported is substantially true and that it shows that a wrong-doing is being committed by your employer or by persons acting in your employer's name and interests.

The protection given to the whistle-blower starts with confidentiality and anonymity of the reporting person, and any other persons aiding them (facilitators). It is crucial to note that protection is in the form of confidentiality and strict anonymity. It is strictly prohibited for the WRO to disclose the identity of the whistle-blower: therefore no information that identifies the whistle-blower will be ever be disclosed, "unless the whistle-blower expressly consents in writing to the disclosure of that information".

Whistle-blower may not be subjected to detrimental action on account of having made a protected disclosure as defined by the Act. Furthermore, a whistle-blower cannot be victimised, intimidated or harassed for having reported a genuine concern.

If the reporting person knowingly disclose false information the reporting will not be protected, and he/she will be committing a criminal offence in line with article line of the provisions of the Act.

The law offers varying degrees of mitigation of responsibility with regards to criminal, disciplinary or civil proceedings being taken against the reporting officer. In some cases, the court or tribunal hearing the case shall take into account the fact that the reporting person stated the wrong-doing when passing judgement and the punishment or damages the reporting person may be liable to may be mitigated. In others, the law allows for the Attorney General to issue a certificate of complete immunity from prosecution and the law even provides for the granting of a new identity altogether. Of course, it all depends and varies on the gravity of the case.

The same protection afforded to the whistle-blower may also be granted to:

- facilitators, that is persons who assist a reporting person in the reporting process in a work-related context, and whose assistance should be confidential;
- colleagues, relatives of and third parties connected to the whistle-blower, who may suffer retaliation within a work-related context; and
- legal aid in criminal cross-border and civil proceedings.

10. Anonymous reporting

The Whistle-blower Act does not allow or enforce the protection of anonymous disclosures made by reporting persons. Nevertheless, the Act permits the receipt and processing of anonymous disclosures

in determining whether improper practice has occurred. Furthermore, should a whistle-blower be identified following an anonymous disclosure, and consequently suffers retaliation, that disclosure would still be a protected disclosure, provided it meets the conditions set out within the Act concerning protected disclosures (i.e. made in good faith, not for personal gain and based on reasonable grounds).