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**TO** : **Persons who report breaches of Union and National Law - Whistleblowers**

**FROM** : **Cyprus Security and Exchange Commission**

**DATE** : **15 December 2023**

**CIRCULAR No** : **C608**

**SUBJECT** : **Procedures for external reports of breaches of Union and National Law, based on the Protection of Persons who report breaches of Union and National Law of 2022, L.6(I)/2022**

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The Cyprus Securities and Exchange Commission ("CySEC") issues this circular pursuant to article 14, of Persons who report breaches of Union and National Law of 2022 – Whistleblowers, as amended from time to time, ("L.6(I)/2022") wishing to inform about the procedures adopted, regarding external whistleblowing.

#### **A. Conditions for protection of Whistleblowers**

A whistleblower is protected under the provisions of L.6(I)/2022, when all the following conditions are met:

1. She/he falls under the categories of persons referred to in articles 5 and 32 of L.6(I)/2022 and has collected information through the work environment.

For example,

i. Whistleblowers can be:

- Employees in private, public or broad public sector,
- Self-employed,
- Shareholders of companies,
- Persons who belong to the administrative/management/supervisory body of a company,
- Volunteers,
- Trainees/learners, whether paid or not,
- Persons working under the supervision or instructions of contractors, subcontractors and suppliers,
- Persons who obtained the information in the employment context but no longer work or provide their services to the particular employer,
- Persons who obtained the information during the stage of the recruitment process or any other stage before the conclusion of the employment

contract or the commencement of the employment relationship.

- ii. Persons who, while they have not personally submitted a report or made a public disclosure, are nevertheless connected to the whistleblowers and fall under one of the following categories:
  - Facilitator, as a person who has supported the whistleblower during the reporting process and has kept this assistance confidential
  - Persons related to the whistleblower, such as co-workers, blood relatives or relatives up to the fourth degree (i.e. parents, siblings, uncles and first cousins)
  - Legal entities that the whistleblower owns or is somehow associated with.
2. Information concerns violations of National or European legislation referred to in articles 4 and 31 of L.6(I)/2022 , respectively.
3. She/he had reasonable grounds to believe that the information reported regarding the breaches was true at the time of the reporting and that this information falls within the scope of L.6(I)/2022.
4. The report was made internally through the internal reporting channels or **externally to the CySEC**, or the whistleblower made a public disclosure under the conditions set by L.6(I)/2022.
5. Information must not have been given in violation of the rules for the protection of classified information, legal or medical confidentiality, the judicial deliberations confidentiality and the rules of criminal procedure, or its access and its disclosure does not constitute a criminal offense.

It is clarified that L.6(I)/2022 also applies in case of anonymous reporting of violations, provided that after the anonymous reporting the whistleblower is identified. In this case, the whistleblower has the right to protection in the case she/he has suffered retaliation.

## **B. Reference channel with the CySEC**

1. The CySEC has established the following dedicated reporting channels for receiving and following up on “**external reports**” of breaches which can be submitted either in writing or orally and/or both.
  - a) Telephone line: +357 22 506 609

Conversations while using the abovementioned telephone line are recorded **ONLY** with the consent of the whistleblower. Otherwise, full and accurate minutes of the conversation are kept. In cases where the whistleblower has disclosed her/his identity, then she/he is given the opportunity to check, rectify and agree with the minutes of the conversation, by signing them.

- b) Email: [whistleblowing@cysec.gov.cy](mailto:whistleblowing@cysec.gov.cy)
  - c) Postal Address: Diagorou street 19, 1097 Nicosia, Cyprus, attention of Department of Market Surveillance and Investigations (“DMSI”) marked as “CONFIDENTIAL”.
  - d) Arranging a personal meeting with the DMSI, following the telephone call with the whistleblower on the telephone line specified above in paragraph B1a. In this case, the same procedures regarding conversation recording and/or record keeping apply, as described above in paragraph Ba1.
2. Whistleblowers may submit written infringement reports by completing the “External Infringement Report Submission Form” (**ANNEX**) and sending it through the communication channels specified in paragraphs B1b and B1c.

### **C. Report handling process and type of monitoring**

Upon receipt of the report, and within (7) seven days, an acknowledgment of receipt is communicated to the whistleblower, unless something different is expressly requested by the whistleblower or if CySEC reasonably believes that the acknowledgement of the report may endanger the protection of the whistleblower’s identity. The said acknowledgment is communicated either in writing to the whistleblower’s postal or electronic address, if such has been provided, or orally by telephone.

With the said acknowledgment, the whistleblower is also informed of the time period within which, she/he will receive information regarding the results of the investigation of the report, which does not exceed the period of three (3) months from the date of sending the acknowledgment of receipt or the period of six (6) months, in duly justified cases.

Subsequently, the DMSI monitors the report, assessing the accuracy of the allegations and the likelihood of taking actions to address the reported breach. Specifically, after the DMSI assesses the accuracy of the allegations by conducting an investigation, based on the powers granted to CySEC by the respective national or EU legislation, the DMSI will consider whether it will proceed with further actions, or whether to refer the report to another competent authority for further actions, or terminate the proceedings due to lack of sufficient evidence.

During follow up of the report, the DMSI may request from the whistleblower, either in writing to the whistleblower’s postal or electronic address, if such has been provided, or orally by telephone, to clarify the information disclosed or to provide additional information that is available to the whistleblower.

Notification to the whistleblower, which includes the results of the investigation of the report, is given in the same way as the acknowledgment of the receipt, as described above. In case the whistleblower has not provided any contact information, then she/he can receive the above information orally, by contacting the DMSI on the telephone line mentioned above.

Information received, exchanged or transmitted when receiving reports of actual or potential violations of Union or National Law, are handled in accordance with the requirements of confidentiality, as provided in article 17 of L.6(I)/2022.

CySEC through the DMSI, transmits a violation report to a competent authority, within a reasonable period of time and in a secure manner, informing the whistleblower regarding the transmission, without delay, in the case where the whistleblower submits a report to a channel that is not competent to deal with the alleged violation.

#### **D. Privacy policy and Processing of Personal Data**

Regarding the confidentiality regime applicable to whistleblowing reports, CySEC draws the attention of whistleblowers to the following circumstances in which a whistleblower's confidential information may be disclosed:

- (a) In the context of civil or criminal or other legal proceedings where the CySEC is called upon to provide evidence or give testimony, or in criminal or disciplinary proceeding;
- (b) In the case that CySEC proceeds to disclosure, which is a necessary and proportionate obligation imposed by Union or National law, in the context of investigations by national authorities or judicial proceedings, inter alia with the aim of ensuring the rights of defence of the reported person;
- (c) Within the framework of the right to be heard, of the reported person or any other person called for representations by CySEC, giving to the said persons, access to the relevant administrative file.

It is emphasized that CySEC, regarding to the processing of personal data in the context of breaches reports, complies with Regulation 2016/679, on protection of natural persons against the processing of personal data and the free movement of such data, the Protection of Natural Persons Against the processing of Personal Data and the Free Movement of such Data Law of 2018 ("L.125(I)/2018") and the Protection of Natural Persons against the Processing of Personal Data by Competent Authorities for the Purposes of Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Sanctions and on the Free Movement of such Data Law of 2019 ("L.44(I)/2019"). Furthermore, any exchange or transmission of information by the institutions and other institutions or organizations of the Union is carried out in accordance with EU Regulation 2018/1725.

It is pointed out that personal data collected in the context of reports, are deleted within three (3) months from the date of completion of the procedure. In the case that judicial or disciplinary proceedings have been initiated against the reported person or the whistleblower, personal data shall be retained for the entire duration of the proceedings, including the case of an appeal or objection, and, one (1) year after their conclusion, are deleted.

## **E. Ways and procedures to protect against retaliation**

A whistleblower who submits a report, according to the provisions of L.6(I)/2022, is automatically protected from a series of actions that could be characterized as vindictive behaviour or retaliation, while, at the same time, she/he enjoys important protection measures.

### **1. Judicial measures to stop retaliatory conduct and claim damages.**

In case a whistleblower suffers any retaliatory behaviour or harm/damage, has the right to apply to a competent court (Labor Disputes Court or District Court, or Administrative Court, as the case may be), to remove any retaliation, and meanwhile to claim any damages.

A whistleblower must prove that she/he filed a report or published a disclosure and that, as a result of her/his action, she/he suffered some harm/damage, e.g. she/he was fired, or demoted, or a disciplinary investigation was initiated against her/him, etc. Then, a rebuttable presumption is created that the harm/damage is a result of retaliation for the report she/he filed. That is, it is now up to the other person to prove that the measure which caused the damage, did not constitute retaliatory action, but was based on duly justified reasons, unrelated to the fact of the filing of the report.

If the Court decides that the whistleblower has indeed suffered any retaliation and/or harm/damage due to retaliatory conduct, then it will award damages covering both the material damage and any moral or physical harm/damage, the whistleblower has suffered. At the same time, any retaliatory measure suffered by the whistleblower is considered void ab initio i.e. as if it never happened. In fact, if a person was fired because of the filing of a report and wishes to return to work, then the Labor Disputes Court will even order her/his reinstatement.

### **2. Protection from any civil liability**

In some cases, the whistleblower, in order to support her/his report, may need to share with internal or external reporting mechanism, or during public disclosure, information, data, documents, for which some restriction applies, e.g. confidentiality reasons or personal data protection. If the employee has reasonable grounds to believe that the disclosure of this information was necessary to reveal the violation, then she/he will not be considered to have violated these restrictions and therefore will not be liable for any civil liability.

However, that protection does not extend to cases where obtaining or accessing this information constitutes a separate criminal offence. Therefore, if the whistleblower by sharing the information commits a criminal offense, then she/he can be prosecuted.

Additionally, the whistleblower who submitted an infringement in accordance with the provisions of L.6(I)/2022, is not liable in relation to civil proceedings such as the action for defamation, infringement of intellectual property rights, breach of the obligation of confidentiality, violation of the rules for the protection of personal

data, disclosure of trade secrets, or for compensation claims under Private, Public or Collective Labor Law.

In fact, if such a case is initiated against her/him, the whistleblower has the right to plead that she/he submitted a report or made a public disclosure, in accordance with the provisions of L6(I)/2022, and request that the lawsuit be dismissed.

**\*Note:** Whistleblowers are protected from liability for breach of confidentiality, given that the information provided is not in violation of the rules protecting classified information, attorney or medical confidentiality, confidentiality of judicial deliberations, and the rules of criminal procedure, and the access and disclosure of the information does not constitute a criminal offence, and provided that they do not involve violations of rules on defence or security issues or contracts, unless covered by the relevant acts of the European Union.

### 3. Witness in criminal proceedings

Depending on the nature of the content of the report and the seriousness of the case, criminal proceedings may be initiated against a person named in the complaint.

In such a case, it's possible that the whistleblower will need to testify as a witness before the Court, in order to facilitate the establishment of the charge. L.6(I)/2022 provides that in such cases, the whistleblower enjoys protection measures aimed primarily at preserving her/his anonymity, such as, for example, testifying in the absence of the accused, testifying through closed circuit television, her/his testimony is videotaped. In fact, depending on the case, this person can also be included in the Protection of Witnesses Program.

### 4. Employer's obligation to contribute

Each employer must protect employees from any act of their supervisor or any person responsible for them, that constitutes retaliation due to the report, and take all appropriate and timely measures to prevent them. Employers, as soon as they are aware of specific retaliation due to the report, should take appropriate measures to remove and not repeat the retaliation, as well as to remove its consequences.

In case employers do not take any measures to prevent the above-mentioned behaviours, then they may be considered accomplices, meaning that they may be considered to have the same responsibility as if they had carried out retaliation, threats, or retaliatory actions against the whistleblower.

## **F. Information**

Further information regarding the procedures and remedies that are applicable for protection against retaliation and the rights of whistleblowers, is available to the public, in the form of "Guidelines" and can be found at the link below on the website of the

Department of Justice and Public Order (125 Athalassis Avenue, 1461 Strovolos, Nicosia  
- Cyprus, Tel.: 22805950, Fax: 22518356, Email: registry@mjpo.gov.cy).  
<http://www.mjpo.gov.cy/mjpo/mjpo.nsf/all/463F2ADA1BF13580C22588080026C296?opendocument>

Yours sincerely,

Dr Georgos Theocharides  
Chairman of the Cyprus Securities and Exchange Commission

### WHISTLEBLOWING EXTERNAL DISCLOSURE FORM

The completed form must be submitted in electronic or paper format to the Department of Market Surveillance and Investigation of the Cyprus Securities and Exchange Commission ("CySEC") to the following electronic or postal address respectively:

- Electronic address: [whistleblowing@cysec.gov.cy](mailto:whistleblowing@cysec.gov.cy)
- Postal Address: 19 Diagorou Str. 1097 Nicosia, Cyprus for the attention of the Department of Market Surveillance and Investigations

Have you made an internal disclosure within your organisation regarding this infringement?	
Yes	<input type="checkbox"/>
Why are you making this disclosure to CySEC? (you must choose at least one of the below)	
1. No information given on internal disclosure made.	<input type="checkbox"/>
2. No action taken on internal disclosure made.	<input type="checkbox"/>
No	<input type="checkbox"/> please state the reason (you must choose at least one of the below)
1. Members of the board of directors or senior management of the organisation are or may be involved.	<input type="checkbox"/>
2. Justified by the significance and urgency of the infringement.	<input type="checkbox"/>
3. Reasonable suspicion of discrimination.	<input type="checkbox"/>
4. Likely that evidence will disappear or be concealed or destroyed.	<input type="checkbox"/>
5. Other exceptional circumstances (if yes, please provide details).	<input type="checkbox"/>
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Please provide the following information regarding each infringement in your organization.



**Whistleblower's contact information**

*(This section may be left blank if the whistleblower wishes to remain anonymous.)*

1. Name and Surname:
2. Organisation:
3. Position:
4. Country:
5. Contact number:
6. Email address:

**Reported person's information**

1. Name and Surname:
2. Country:
3. Position:
4. Organisation:
5. Contact number:
6. Email address:

**Witness(es) information (if any)**

*(If there are more than three witnesses, give their details on separate pages.)*

1. Name and Surname:
2. Title:
3. Position:
4. Contact number:
5. Email address:

1. Name and Surname:
2. Title:
3. Position:
4. Contact number:
5. Email address:

1. Name and Surname:
2. Title:
3. Position:
4. Contact number:
5. Email address:

**Disclosure of infringement**

*Briefly describe the infringement and how you came to know about it. If there is more than one infringement, number each infringement and use as many pages as necessary.*

1. Describe the infringement:

2. Who committed the infringement?

3. When did it happen and when did you notice it?

4. Where did it happen?

5. Is there any evidence that you can provide?

*You should not attempt to obtain evidence/information for which you do not have a right of access since reporting persons/whistleblowers are disclosing parties and not investigators.*

6. Other parties/persons involved other than the reported person(s) stated above:

7. Any other details or information which would assist in the investigation:

8. Additional comments:

**Date:**

**Signature:**  
*(Optional)*

For official use only

**Department of Market Surveillance and Investigations**

**Disclosure number:**

Received by:	Received on:
	Acknowledged on:
External disclosure appropriate: Yes <input type="checkbox"/> No <input type="checkbox"/> ( <i>Please state reasons below:</i> )  _____ _____ _____	
Update sent on:	
Investigation carried out by:	
Results of investigation:	
Actions taken/Conclusion:	
Referral to other authorities (if necessary):	

**Signature:**