

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,855, 10 ta' Mejju, 2022

Taqsimha B

L.N. 136 of 2022

**FINANCIAL MARKETS ACT
(CAP. 345)
INVESTMENT SERVICES ACT
(CAP. 370)**

Data Reporting Services (Amendment) Regulations, 2022

IN EXERCISE of the powers conferred by article 49 of the Financial Markets Act and article 12 of the Investment Services Act, the Minister responsible for the regulation of Financial Services, acting on the advice of the Malta Financial Services Authority, has made the following regulations: -

1. (1) The title of these regulations is the Data Reporting Services (Amendment) Regulations, 2022, and these Regulations shall be read and construed as one with the Data Reporting Services Regulations, hereinafter referred to as "the principal regulations".

Citation and
scope.
S.L. 345.21.
S.L. 370.37.

(2) The scope of these regulations is to:

(a) transpose Article 1(4) of Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing; and

(b) implement in part Article 4 of Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds.

Amends
regulation 1 of
the principal
regulations.

2. Sub-regulation 2 of regulation 1 of the principal regulations shall be substituted by the following:

"(2) The purpose of these regulations is to implement points 34, 35, 36, 36a of Article 2(1) and Article 27c of MiFIR and Article 22 of MiFID.

Amends
regulation 2 of
the principal
regulations.

3. Sub-regulation 1 of regulation 2 of the principal regulation shall be amended as follows:

(a) the definition "APA" shall be substituted by the following:

""APA" means a person authorised under MiFIR to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of MiFIR;"

(b) the definition "ARM" shall be substituted as follows:

" "approved reporting mechanism" or "ARM" means a person authorised under MiFIR to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;"

(c) the definition "CTP" shall be substituted by the following:

""consolidated tape provider" or "CTP" means a person authorised under MiFIR to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 of MiFIR from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;"

(d) the definition of "data reporting service provider" shall be substituted by the following:

" "data reporting services provider" means an APA, CTP or ARM and a person referred to in Article 27b(2) of MiFIR; and

(e) the definitions of "data reporting services", "home member state", "management body" and "systematic internaliser" shall be deleted.

4. The words "Part I", "Part II", "Part III", "Part IV" and "Part V" of the principal regulations shall be deleted. Amends generally the principal regulations.
5. Immediately after regulation 2 of the principal regulations, there shall be added the following new regulation: Adds regulation 2A to the principal regulations.

"Competent authority.
Cap. 330.

2A. (1) The Malta Financial Services Authority established by the Malta Financial Services Authority Act shall be the designated competent authority in Malta responsible for the authorisation and supervision of APAs and ARMs which have a derogation in accordance with Article 2(3) of MiFIR.

(2) The competent authority shall exercise all the functions, obligations and powers and shall satisfy all the requirements imposed on competent authorities by MiFIR and MIFID.

(3) Without prejudice to sub-regulation (2), the competent authority may, for the better implementation of MiFIR, exercise any of the powers assigned to it under the Act in relation to persons acting as data reporting services providers."
6. Regulation 3 of the principal regulations shall be substituted by the following: Substitutes regulation 3 of the principal regulations.

"Requirement for authorisation.

3. (1) No person shall operate an APA, a CTP or an ARM in or from Malta, or hold itself out to be or provide the services of an APA, a CTP or an ARM, unless such person has received prior authorisation in accordance with Article 27b of MiFIR.

(2) A person seeking to operate an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR in or from Malta shall require prior authorisation for this purpose. The authorisation shall be issued by the competent authority in terms of these regulations and Article 27b of MiFIR.

(3) An application for authorisation to operate an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR in terms of sub-regulation (2) shall be made to the competent authority in writing and shall be accompanied by such documents as the competent authority may specify.

(4) An APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR shall be authorised by the competent authority in terms of sub-regulation (2) where:

(a) the data reporting services provider is a legal person established in the Union; and

(b) the data reporting services provider meets the requirements laid down in Title IVa of MiFIR:

Provided that the competent authority shall not issue an authorisation unless it is satisfied that the applicant is in a position to comply with any conditions for authorisation set out in Title IVa of MiFIR which the competent authority may deem fit to impose.

(5) Notwithstanding the provisions of sub-regulation (2), the competent authority shall allow an investment firm or a market operator operating a trading venue to operate the data reporting services of an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR subject to the prior verification of their compliance with the provisions of Title IVa of MiFIR. This service shall be included in their licence.

Substitutes regulation 4 of the principal regulations.

7. Regulation 4 of the principal regulations shall be substituted by the following:

"Withdrawal of authorisation.

4. The competent authority may withdraw the authorisation of an APA or an ARM with a derogation in accordance with Article 2(3) of MIFIR, where such APA or ARM:

(a) does not make use of the authorisation within twelve months from the date when authorisation was granted, expressly renounces the authorisation or has provided no services for the preceding six months;

(b) obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised; or

(d) has seriously and systematically infringed any applicable provision set out in MiFIR."

8. Regulation 5 of the principal regulations shall be substituted by the following:

Substitutes regulation 5 of the principal regulations.

"Power of competent court to make rules.

5. For the better carrying out of the provisions of MiFIR and of these regulations, the competent authority may, from time to time, issue and publish rules which shall be binding on all persons acting as data reporting services providers. Such rules may lay down additional requirements and conditions in relation to these matters as the competent authority may consider appropriate, including:

(a) the operation of Title VIa of MiFIR, any provision dealing with data reporting services providers in MiFID, or of these regulations;

(b) any matter relating to the functions, obligations and powers of the competent authority under Title VIa of MiFIR and any provision dealing with data reporting services providers in MiFID; and

(c) any other matter arising in connection with data reporting services providers."

9. Regulation 6 of the principal regulations shall be substituted by the following:

Substitutes regulation 6 of the principal regulations.

"Applicability of Title IVa of MiFIR to data reporting services providers.

6. The provisions of Title IVa of MiFIR shall apply to persons acting as data reporting services providers in or from Malta and such persons shall exercise all the obligations and satisfy all the requirements imposed on such persons by the said provisions of Title IVa of MiFIR."

10. Regulation 7 of the principal regulations shall be substituted by the following:

Substitutes regulation 7 of the principal regulations.

"MiFIR to prevail in case of any inconsistency.

7. Upon the coming into force of Title IVa of MiFIR, these regulations shall be construed and applied in accordance therewith and, insofar as the provisions of these regulations are inconsistent with the provisions of the said MiFIR, the provisions of MiFIR shall prevail and the provisions of these regulations shall not apply to the extent of the inconsistency."

Deletes
regulations 8, 9,
10, and 11 and
their respective
titles from the
principal
regulations.

11. Regulations 8, 9, 10 and 11 of the principal regulations and their respective titles "Conditions for APAs", "Conditions for CTPs", "Conditions for ARMs" and "Administrative Penalties, other measures and Appeals" shall be deleted.
