

SUBSIDIARY LEGISLATION 370.13

EUROPEAN PASSPORT RIGHTS FOR PERSONS OPERATING
MULTILATERAL TRADING FACILITIES OR ORGANIZED
TRADING FACILITIES REGULATIONS

*Substituted by:
L.N. 399 of 2017*

1st November, 2007

*LEGAL NOTICE 326 of 2007, as amended by Legal Notice 215 of 2012
and 399 of 2017.*

1. (1) The title is the European Passport Rights for Persons Operating Multilateral Trading Facilities or Organised Trading Facilities Regulations.

*Citation and
objective.
Substituted by:
L.N. 399 of 2017.
S.L. 370.13.*

(2) The objective is to implement the relevant provisions of Articles 34(6) and (7), Article 79(2) and Articles 86(3) and (4) of MiFID as herein defined, as well as to transpose, in part, Article 6(27)(c) of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), and the regulations shall be interpreted and applied accordingly.

2. (1) In these regulations, unless the context otherwise requires -

*Interpretation.
Amended by:
L.N. 215 of 2012.
L.N. 399 of 2017.
Cap. 370.*

"Act" means the Investment Services Act;

"competent authority" means the Malta Financial Services Authority appointed under article 2A of the Act;

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

*Added by:
L.N. 399 of 2017.*

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"European right" means the entitlement of a person operating a multilateral trading facility or an organised trading facility to provide appropriate arrangements in the territory of a Member State or EEA State other than that in which that person has been authorized to operate such facility, so as to facilitate access to and use of their systems by remote users;

*Amended by:
L.N. 399 of 2017.*

"Home Member State or EEA State" means the Member State or EEA State in which the persons operating the multilateral trading facility or an organised trading facility are so authorised;

*Amended by:
L.N. 399 of 2017.*

"Host Member State or EEA State" means the Member State or EEA State in which, a person authorised to operate a multilateral trading facility in Malta, provides appropriate arrangements so as to facilitate access to and use of its system by remote members established in that same Member State or EEA State;

*EUROPEAN PASSPORT RIGHTS FOR PERSONS
OPERATING MULTILATERAL TRADING FACILITIES OR
ORGANIZED TRADING FACILITIES REGULATIONS*

2 [S.L.370.13

*Substituted by:
L.N. 399 of 2017.*

"MiFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

*Added by:
L.N. 399 of 2017.*

"multilateral system" means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;

*Substituted by:
L.N. 399 of 2017.*

"multilateral trading facility" or "MTF" means a multilateral system, operated by an investment services licence holder or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of MiFID;

*Added by:
L.N. 399 of 2017.*

"organised trading facility" or "OTF" means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of MiFID;

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

*Substituted by:
L.N. 399 of 2017.*

**Part I – Exercise of European Passport Rights by Persons
operating a Multilateral Trading Facility or an Organised Trading
Facility established in a Member State or EEA State**

Exercise of
passport right by
persons operating a
Multilateral
Trading Facility or
an organised
trading facility
established in a
Member State or
EEA State.
*Amended by:
L.N. 215 of 2012;
A.L. 399 tal-2017.*

3. (1) A person who operates a multilateral trading facility or an organised trading facility in any Member State or EEA state other than Malta and which is seeking to provide appropriate arrangements in Malta in exercise of a European right shall satisfy the conditions specified in subregulation (2) and shall be exempt from the provisions of article 3 of the Act.

(2) The conditions for the purposes of this regulation are that:

*Amended by:
L.N. 399 of 2017.*

(a) the person operating the multilateral trading facility or an Organised Trading Facility has communicated to its European regulatory authority that it intends to provide arrangements to facilitate access to and trading on those markets by remote users, members or participants established in Malta;

*Amended by:
L.N. 399 of 2017.*

(b) the supervisory authority of the persons operating a multilateral trading facility or an organised trading facility in terms of Article 34(7) of MiFID has, within one month of the receipt of the information specified in paragraph (a), notified the competent authority of this information.

**Part II – Exercise of Passport Rights by Persons operating a
Multilateral Trading Facility or Organised Trading Facility
established in Malta**

*Substituted by:
L.N. 399 of 2017.*

4. (1) Persons operating a multilateral trading facility or an organised trading facility established in Malta may exercise a European right to provide appropriate arrangements to facilitate access to and trading on those markets by remote users, members or participants in another Member State or in an EEA State subject to the requirements of this regulation.

Exercise of
passport right by
persons operating
a multilateral
trading facility or
an organised
trading facility
established in
Malta.

(2) A person operating a multilateral trading facility or organised trading facility established in Malta shall give the competent authority a notice of its intention to exercise a European right wherein it shall communicate the Member State or the EEA State in which it intends to provide such arrangements.

*Amended by:
L.N. 399 of 2017.*

(3) The competent authority shall communicate, within one month, the information provided in terms of subregulation (2) to the European regulatory authority of the Member State or EEA State in which the person operating a multilateral trading facility or an organised trading facility established in Malta intends to provide such arrangements.

*Amended by:
L.N. 399 of 2017.*

(4) The competent authority shall, on the request of the European regulatory authority of the Member State or EEA State in which the person operating a multilateral trading facility established in Malta intends to provide such arrangements, and without undue delay, communicate the identity of the remote members or participants of the multilateral trading facility established in Malta.

*Amended by:
L.N. 399 of 2017.*

**Part III - Contraventions by Persons operating a Multilateral
Trading Facility in Malta in exercise of a European Right**

5. (1) Where the competent authority has clear and demonstrable grounds for believing that a person, authorised to operate a multilateral trading facility or an organised trading facility in any Member State or EEA state and who is providing access to its systems in Malta in exercise of a European right, is in breach of its obligations arising from the provisions adopted pursuant to MiFID, it shall refer those findings to the European regulatory authority of the home Member State or EEA State.

Exercise of
passport rights by
persons licensed in
Malta to operate a
Multilateral
Trading Facility or
an Organised
Trading Facility.
*Amended by:
L.N. 215 of 2012;
L.N. 399 of 2017.*

(2) If, despite the measures taken by the European regulatory authority or because such actions prove inadequate, the person providing access to its systems in Malta in exercise of a European right, persists in acting in a manner which is clearly prejudicial to the interests of investors in Malta or the orderly functioning of markets, the competent authority shall, after informing the European regulatory authority, take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. This shall include the possibility of preventing the person providing access to its systems in Malta, in exercise of a European Right from making the said arrangements available to remote members or participants established in Malta. The Commission of the European Union and ESMA shall be informed

*Amended by:
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*EUROPEAN PASSPORT RIGHTS FOR PERSONS
OPERATING MULTILATERAL TRADING FACILITIES OR
ORGANIZED TRADING FACILITIES REGULATIONS*

4 [S.L.370.13

of such measures without delay. In addition, the competent authority may refer the matter to ESMA.

(3) Any measure adopted pursuant to this regulation shall be communicated to the person concerned, in writing, together with reasons justifying such measures and shall be subject to a right of appeal to the Financial Services Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

*Added by:
L.N. 399 of 2017.*

Part IV - Cooperation between the Competent Authority and European Regulatory Authorities

Cooperation between the competent authority and European regulatory authorities.

*Added by:
L.N. 399 of 2017.*

6. Where the operations of a trading venue that has established arrangements in Malta have become of substantial importance for the functioning of the securities markets and the protection of Maltese investors, the European regulatory authority of the home Member State or EEA State of the trading venue and the competent authority shall establish proportionate cooperation arrangements.

*Added by:
L.N. 399 of 2017.*

Part V - Administrative Penalties, other Administrative Measures and Appeals

Administrative Penalties, other Administrative Measures and Appeals.

*Added by:
L.N. 399 of 2017.*

7. (1) Where a person falling within the scope, fails to comply with any provisions of such regulations or any rules issued thereunder further implementing such regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty and other administrative measures in accordance with the provisions of the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations, 2017.

L.N. 401.

(2) A right of appeal to the Financial Services Tribunal shall lie from the decisions which the competent authority shall take under these regulations and the provisions of article 19 of the Act shall apply *mutatis mutandis*.
