

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,878, 17 ta' Ġunju, 2022

Taqsimha B

L.N. 178 of 2022

**MALTA FINANCIAL SERVICES AUTHORITY ACT
(CAP. 330)**

Malta Financial Services Authority Act (Packaged Retail and Insurance-Based Investment Products (PRIIPs)) Regulations, 2022

IN EXERCISE of the powers conferred by article 20A of the Malta Financial Services Authority 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 Malta Financial Services Authority Act (Packaged Retail and Insurance-Based Investment Products (PRIIPs)) Regulations, 2022. Citation and scope.

(2) The purpose of these regulations is to implement the relevant provisions of the PRIIPs Regulation as herein defined and these regulations shall be interpreted and applied accordingly.

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

"Act" means the Malta Financial Services Authority Act; Cap. 330.

"Authority" shall have the same meaning as that assigned to it in the Malta Financial Services Authority Act; Cap. 330.

"Directive 2009/138/EC" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as may be amended from time to time;

"Directive 2011/61/EU" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as may be amended from time to time;

"Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, as may be amended from time to time;

"Directive 2014/65/EU" 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 (recast), as may be amended from time to time;

"Directive (EU) 2016/97" means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), as may be amended from time to time;

"ESA" means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010, or 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, as the case may be;

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"Financial Services Tribunal" means the tribunal established under article 21 of the Act;

"insurance-based investment product" means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations;

"packaged retail and insurance-based investment product" or "PRIIP" means a product that is one or both of the following:

- (a) a PRIP;
- (b) an insurance-based investment product;

"packaged retail and insurance-based investment product manufacturer" or "PRIIP manufacturer" means:

- (a) any entity that manufactures PRIIPs;
- (b) any entity that makes changes to an existing PRIIP including, but not limited to, altering its risk and reward profile or the costs associated with an investment in a PRIIP;

"packaged retail investment product" or "PRIP" means an investment, including instruments issued by special purpose vehicles as defined in point (26) of Article 13 of Directive 2009/138/EC or securitisation special purpose entities as defined in point (an) of Article 4(1) of Directive 2011/61/EU, where, regardless of the legal

form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor;

"person selling a PRIIP" means a person offering or concluding a PRIIP contract with a retail investor;

"PRIIPs Regulation" means Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"Regulation (EU) 2017/1129" means Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, as may be amended from time to time;

"retail investor" means:

(a) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU;

(b) a customer within the meaning of Directive (EU) 2016/97, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU.

(2) Words and expressions used in these regulations which are also used in the Act, but which are not defined herein, shall have the same meaning assigned to them in the Act.

3. (1) These regulations shall apply to PRIIP manufacturers and persons advising on, or selling, PRIIPs. Applicability.

(2) Where PRIIP manufacturers subject to the PRIIPs Regulation are also subject to Regulation (EU) 2017/1129, both the PRIIPs Regulation and Regulation (EU) 2017/1129 shall apply to them.

(3) Where PRIIP manufacturers subject to the PRIIPs Regulation are also subject to Directive 2009/138/EC, both the PRIIPs Regulation and Directive 2009/138/EC shall apply to them.

(4) Upon expiration of the exemption laid down in Article 32

of the PRIIPs Regulation, these regulations shall also apply to the entities referred to in the same Article 32 of the PRIIPs Regulation.

Competent
authority.
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4. (1) The Malta Financial Services Authority established by the Act shall be the designated competent authority in Malta to supervise the requirements that the PRIIPs Regulation places on PRIIP manufacturers and the persons advising on, or selling, the PRIIP.

(2) The Authority shall monitor the market for insurance-based investment products which are marketed, distributed or sold in or from Malta.

Applicability of
the PRIIPs
Regulation to
the Authority.

5. (1) The Authority shall exercise and fulfil all the functions, obligations and powers which are required or may be imposed on competent authorities in accordance with the PRIIPs Regulation and it shall satisfy all the applicable obligations and requirements imposed on competent authorities by the PRIIPs Regulation.

(2) Without prejudice to sub-regulation (1), the Authority may, for the better implementation of the PRIIPs Regulation, exercise any of the powers assigned to it under the Act.

Power of the
Authority to
issue Rules.

6. The Authority may issue and publish Rules in terms of article 16(2)(a) and article 20A(3) of the Act for the better carrying out of the provisions of the PRIIPs Regulation and of these regulations.

Administrative
penalties and
measures.

7. (1) Without prejudice to the powers of the Authority under the Act or any other law and to any criminal sanctions which may be imposed on PRIIP manufacturers and persons advising on, or selling, PRIIPs, the Authority shall impose administrative penalties and measures for breaches of the provisions of the Act or regulations or Rules made thereunder implementing the provisions of the PRIIPs Regulation, and in respect of infringements covered by the PRIIPs Regulation, and shall take all necessary measures to ensure that such administrative penalties and measures are implemented.

(2) The administrative penalties and measures taken pursuant to sub-regulation (1) shall be effective, proportionate and dissuasive.

Powers of the
Authority.

8. (1) This regulation shall apply to infringements of Article 5(1), Articles 6 and 7, Article 8(1) to (3), Article 9, Article 10(1), Article 13(1), (3) and (4) and Articles 14 and 19 of the PRIIPs Regulation.

(2) Without prejudice to the generality of regulation 7, the Authority shall have the power to impose, in accordance with Maltese law, at least the following administrative penalties and measures for

the infringements indicated in sub-regulation (1):

- (a) an order prohibiting the marketing of a PRIIP;
- (b) an order suspending the marketing of a PRIIP;
- (c) a public warning indicating the person responsible for, and the nature of, the infringement;
- (d) an order prohibiting the provision of a key information document which does not comply with the requirement of Articles 6, 7, 8 or 10 of the PRIIPs Regulation and requiring the publication of a new version of a key information document;
- (e) in the case of a legal person, administrative penalties of up to five million euro (€5,000,000) or of up to three per cent (3%) of the total annual turnover of that legal person according to the last available financial statements approved by the management body or, where the profits gained or losses avoided because of the infringement can be determined, up to twice the amount of the profits gained or losses avoided:

Provided that, where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated financial statements approved by the management body of the ultimate parent undertaking; and

- (f) in the case of a natural person, administrative penalties of up to seven hundred thousand euro (€700,000), or, where the profits gained or losses avoided because of the infringement can be determined, up to twice the amount of the profits gained or losses avoided.

(3) Where the Authority has imposed one or more administrative penalties or measures in accordance with sub-regulation (2), the Authority shall have the power to issue, or require the PRIIP manufacturer or person advising on, or selling, the PRIIP to issue, a direct communication to the retail investor concerned, providing such retail investor with information on the administrative penalty or measure, and informing such investor where to submit complaints or claims for redress.

(4) In the exercise of its powers under these regulations, the Authority shall cooperate closely with other competent authorities to ensure that the administrative penalties and measures produce the results pursued by the PRIIPs Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative penalties and measures to cross-border cases. For the purposes of this sub-regulation, "competent authorities" shall mean the body designated by a Member State or EEA State other than Malta, in accordance with Article 4(8) of the PRIIPs Regulation to supervise the requirements that the PRIIPs Regulation places on PRIIP manufacturers and the persons advising on, or selling, the PRIIP.

Application of administrative penalties and measures by the Authority.

9. When applying the administrative penalties and measures referred to in regulation 8(2), the Authority shall take into account all relevant circumstances including, where appropriate:

- (a) the gravity and duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;
- (c) the impact of the infringement on the interests of retail investors;
- (d) the cooperative behaviour of the person responsible for the infringement;
- (e) any previous infringements by the person responsible for the infringement; and
- (g) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

Right of appeal.

10. A right of appeal to the Financial Services Tribunal shall lie from the decisions to impose penalties and measures taken by the Authority pursuant to these regulations and the PRIIPs Regulation, and the provisions of article 21 of the Act shall *mutatis mutandis* apply.

Reporting of administrative penalties or measures to the competent ESA.

11. (1) Where the Authority has disclosed administrative penalties or measures to the public, it shall simultaneously report those administrative penalties or measures to the competent ESA.

(2) The Authority shall, on an annual basis, provide the competent ESA with aggregate information regarding all administrative penalties and measures imposed in accordance with regulations 7, 8(2) and 8(4) of these regulations.

12. (1) The Authority shall publish on its official website, without undue delay, any administrative penalty or measure for infringements referred to in regulation 8(1), after the person on whom the penalty or measure was imposed has been informed of that decision. The publication shall include, at least, information on the type and nature of the infringement and the identity of the persons responsible for the infringement:

Publication of
the decisions of
the Authority.

Provided that in cases where an appeal is made from a decision to impose an administrative penalty or other measure, the Authority shall, without undue delay, publish on its official website such information and any subsequent information on the status of the appeal and the outcome thereof. The Authority shall also publish any decision annulling a previous decision to impose an administrative penalty or other measure which has been published:

Provided further that the obligation to publish does not apply to decisions imposing measures that are of an investigatory nature.

(2) Notwithstanding sub-regulation (1), where the publication of the identity of the legal persons, or identity or personal data of natural persons, is considered by the Authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise the stability of financial markets or an ongoing investigation, the Authority shall:

(a) delay the publication of the decision to impose an administrative penalty or a measure until the moment where the reasons for non-publication cease to exist;

(b) publish the decision to impose a penalty or a measure on an anonymous basis in a manner which complies with Maltese law, if such anonymous publication ensures an effective protection of the personal data concerned; or

(c) not publish the decision to impose an administrative penalty or measure in the event that the options laid down in paragraphs (a) and (b) above are considered to be insufficient to ensure:

(i) that the stability of financial markets would not be put in jeopardy; and

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(3) The Authority shall inform the ESAs of all administrative penalties or measures imposed but not published in accordance with sub-regulation (2)(c), including any appeal in relation thereto and the outcome thereof. In the case of a decision to publish an administrative penalty or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

(4) The Authority shall ensure that any publication, in accordance with this regulation, shall remain on its official website for a period of at least five (5) years after its publication:

Provided that the personal data contained in the publication shall be kept on the official website of the Authority only for the period which is necessary in accordance with the applicable data protection legislation.
