VERŻJONI ELETTRONIKA

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Taqsima B

L.N. 133 of 2022

MALTA FINANCIAL SERVICES AUTHORITY ACT (CAP. 330)
Malta Financial Services Authority Act (Pan-European Personal Pension Product (PEPP)) 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:

Citation, scope and commencement.

1. (1) The title of these regulations is the Malta Financial Services Authority Act (Pan-European Personal Pension Product (PEPP)) Regulations, 2022.

(2) The purpose of these regulations is to implement the relevant provisions of the Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP).

(3) These regulations shall enter into force on such date as the Minister may establish by notice in the Gazette.

Interpretation.

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

Cap. 330.

"the Act" means the Malta Financial Services Authority Act;

"competent authority" means the Malta Financial Services Authority established by article 3 of the Act;

"European regulatory authority" means the supervisory authority or supervisory authorities as defined in Article 2 of PEPP Regulation, designated by a Member State or an EEA State, other than Malta, empowered by law or regulation to supervise a PEPP provider;

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

"Member State" means a Member State of the European Union;

"PEPP" means a pan-European Personal Pension Productor

"PEPP" as defined in Article 2(2) of the PEPP Regulation;

"PEPP distributor" means a financial undertaking as referred to in Article 6(1) of the PEPP Regulation authorised to distribute PEPPs not manufactured by it, an investment firm providing investment advice, or an insurance intermediary as defined in point (3) of Article 2(1) of Directive (EU) 2016/97 of the European Parliament and of the Council;

"PEPP provider" means a financial undertaking as referred to in Article 6(1) of the PEPP Regulation, authorised to manufacture a PEPP and to distribute that PEPP;

"PEPP Regulation" means the Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP);

"PEPP saver" means a natural person who has concluded a PEPP contract with a PEPP provider.

(2) Words and expressions used in these regulations and which are also used in the Act, shall have, unless the context otherwise requires, the same meaning assigned to them in the Act.

(3) In the event that there is any conflict between these regulations and the provisions of the PEPP Regulation, the provisions of the PEPP Regulation shall prevail.

Competent Authority.

3. (1) The Malta Financial Services Authority, established by the Act, shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the PEPP Regulation, and any reference in these regulations to the competent authority shall be read and construed accordingly.

(2) The competent authority shall supervise the compliance of PEPP providers and PEPP distributors with the PEPP Regulation on an ongoing basis.

(3) The competent authority shall also be responsible to supervise compliance with the obligations set out in the rules or instruments of incorporation of the PEPP provider, and the adequacy of its arrangements and organization with regards to the tasks to be fulfilled when providing a PEPP.

(4) The competent authority shall monitor personal pension products provided in order to verify that such products are designated as PEPP or it is suggested that such products are PEPPs only when they are registered under the PEPP Regulation.

Applicability of the PEPP Regulation to the competent authority.

4. (1) The competent authority shall exercise all functions, obligations, supervisory and investigatory powers that are necessary to satisfy all the requirements imposed on competent authorities in accordance with the PEPP Regulation.

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

Power of the competent authority to issue Rules.

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

Product intervention powers of the competent authorities.

6. (1) The competent authority may prohibit or restrict the marketing or distribution of a PEPP in Malta under the following conditions:

(a) the competent authority is satisfied that there are reasonable grounds to believe that the PEPP gives rise to significant or reiterated saver's protection concerns or poses a risk to the orderly functioning and integrity of financial markets or the stability of whole or part of the financial system within at least one (1) Member State;

(b) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of PEPP savers concerned and the likely effect of the action on PEPP savers who have concluded a PEPP contract;

(c) the competent authority has properly consulted European regulatory authorities in other Member States that may be significantly affected by the action; and,

(d) the action does not have a discriminatory effect on services or activities provided from another Member State.

(2) Where the conditions set out in the sub-regulation (1) are fulfilled, the competent authority may impose the prohibition or restriction on a precautionary basis before a PEPP has been marketed or distributed to PEPP savers where the conditions set out in the sub-regulation (1) are fulfilled. The prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the competent authority.

(3) The competent authority shall not impose a prohibition or restriction under the PEPP Regulation unless it has notified all other European regulatory authorities involved and EIOPA in writing or

through any other medium agreed to between the European regulatory authorities, at least one (1) month before the measure is intended to take effect, of the details of:

(a) the PEPP to which the proposed action relates;

(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and,

(c) the evidence upon which they have based their decision and upon which they have reasonable grounds to believe that each of the conditions in sub-regulation (1) are met.

(4) In exceptional cases, where the competent authority deems it necessary to take urgent action under this regulation in order to prevent detriment arising from the PEPP, the competent authority may take action on a provisional basis, by written notice to all other European regulatory authorities and EIOPA, at least twenty-four (24) hours before the measure is intended to take effect to all other European regulatory authorities and EIOPA, provided that all the conditions set out in this regulation are met. In addition, the competent authority shall clearly state the reasons why a one (1) month notification period would not have adequately addressed the specific concern or threat:

Provided that the competent authority shall not take action on a provisional basis for a period exceeding three (3) months.

(5) The competent authority shall publish on its website a notice of any decision to impose any prohibition or restriction referred to in sub-regulation (1);

Provided that the prohibition or restriction shall only apply in relation to action taken after the publication of such notice.

(6) The notice referred to in sub-regulations (1) and (5) shall specify:

(a) details of the prohibition or restriction;

(b) a time after the publication of the notice from which the measures will take effect; and,

(c) the evidence upon which it is satisfied each of the conditions in sub-regulation (1) are met.

(7) The competent authority shall revoke a prohibition or restriction if the conditions in sub-regulation (1) no longer apply.

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7. (1) The competent authority shall exercise its supervisory powers and its powers to impose administrative penalties and other measures, in such a way as to ensure the full and complete adherence to the requirements and obligations arising out of the Act, any regulations issued thereunder, any Rules issued by the competent authority and the PEPP Regulation, whether directly, in collaboration with other European regulatory authorities or by application to the competent judicial authorities, in terms of the law as warranted by the relevant circumstances.

Supervisory powers and powers to impose administrative penalties and other measures.

(2) The competent authority shall take all the necessary measures so as to ensure that administrative penalties and other measures imposed are effectively implemented.

(3) The administrative penalties and other measures imposed shall be effective, proportionate and dissuasive.

(4) When determining the type and level of an administrative penalty or other administrative measures to be imposed under sub-regulation 9(2), the competent authority shall take into account all the relevant circumstances, including where appropriate:

(a) the materiality, gravity and the duration of the breach;

(b) the degree of responsibility of the natural or legal person responsible for the breach;

(c) the financial strength of the natural or legal person responsible for the breach, in particular by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(d) the importance of profits gained or loses avoided by the natural or legal person responsible for the breach insofar as they can be determined;

(e) the losses for third parties caused by the breach insofar as they can be determined;

(f) the level of cooperation of the natural or legal person responsible for the breach with the competent authority; and,

(g) previous breaches by the natural or legal person responsible for the breach.

8. Without prejudice to the powers of the competent authority under the Act or any other law, the competent authority shall impose administrative penalties and other administrative measures for

Administrative penalties and other measures.

breaches of the Act, any regulations issued thereunder, any Rules issued by the competent authority and the PEPP Regulation.

Administrative penalties and other measures for breaches of the PEPP Regulation.

9. (1) Without prejudice to the generality of regulation 10, the supervisory powers of the competent authority, the competent authority shall impose administrative penalties and other measures for the following breaches:

(a) a financial undertaking as referred to in Article 6(1) of the PEPP Regulation has obtained a registration of a PEPP through false or misleading statements or any other irregular means in infringement of Articles 6 and 7 of the PEPP Regulation;

(b) a financial undertaking as referred to in Article 6(1) of the PEPP Regulation provides, respectively distributes, products bearing the designation "pan-European Personal Pension Product" or "PEPP" without the required registration;

(c) a PEPP provider has not provided the portability service in infringement of Article 18 or 19 of the PEPP Regulation or the information about that service required under Articles 20 and 21 of the PEPP Regulation, or has failed to meet the requirements and obligations set out in Chapter IV, Chapter V, Articles 48 and 50, and Chapter VII of the PEPP Regulation;

(d) a depositary has failed to fulfil its oversight duties under Article 48 of the PEPP Regulation.

(2) Without prejudice to the generality of regulation 9, the competent authority shall have the power to impose the following administrative penalties and other measures for the breaches referred to in sub-regulation (1):

(a) a public statement, which indicates the identity of the natural or legal person and the nature of the infringement in accordance with Article 69 of the PEPP Regulation;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban on any member of the financial undertaking’s management, supervisory or administrative body or any other natural person, who is held responsible, from exercising management functions in such undertakings;

(d) in the case of a natural person, administrative penalties of up to seven hundred thousand euro (EUR 700,000);

(e) in case of a legal person, an administrative penalty of up to five million euro (EUR5,000,000) or up to 10% of the total annual turnover according to the latest available accounts approved by the management, supervisory or administrative body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the latest available consolidated accounts approved by the management, supervisory or administrative body of the ultimate parent undertaking;

(f) administrative penalties of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in point (d) or (e), respectively.

(3) The competent authority shall cooperate closely with other European regulatory authorities to ensure that the administrative penalties and other measures produce the results pursued by the PEPP Regulation. The competent authority shall also coordinate its actions with other European competent authorities to avoid possible duplication and overlap when applying administrative penalties and other measures to cross-border cases.

Publication of the decisions of the competent authority.

10. (1) The competent authority shall publish any decision imposing an administrative penalty or other measure for breaches of the provisions of the Act, any regulations issued thereunder, any Rules issued by the competent authority and the PEPP Regulation on its website, without undue delay after the person on whom the penalty or measure was imposed was informed of that decision. The publication referred to in this sub-regulation shall include information on the type and nature of the breach and the identity of the persons responsible and the administrative penalties or other measures imposed.

(2) Where the publication of the identity of the legal persons, or the personal data of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment, or where the competent authority considers that the publication jeopardises the stability of financial markets or an on-going investigation, the competent authority shall either:

(a) defer the publication of the decision imposing the administrative penalty or other measure until the reasons for non-publication cease to exist;

(b) publish the decision to impose the administrative penalty or other measure, omitting for a reasonable period of time the identity and personal data of the addressee, if it is envisaged that within that period the reasons for anonymous publication shall cease to exist and provided that such anonymous publication ensures an effective protection of the personal data concerned; or

(c) not publish at all the decision to impose the administrative penalty or other measure in the event that the options set out in points (a) and (b) are considered to be insufficient to ensure:

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

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

(3) In the case of a decision to publish an administrative penalty or other measure on an anonymous basis as referred to in sub-regulation (2)(b), the publication of the relevant data may be postponed.

(4) Where a decision imposing an administrative penalty or other measure is subject to an appeal before the relevant judicial authorities, the competent authority shall also publish immediately on its website such information and any subsequent information on the outcome of such appeal. Any judicial decision annulling a decision imposing an administrative penalty or other measure shall also be published.

(5) The competent authority shall ensure that any publication in accordance with this regulation shall remain on its official website for at least five (5) years after its publication:

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

Right of appeal.

11. 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 21 of the Act shall *mutatis mutandis* apply.

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