

12 March 2021

Sustainable Finance Reporting by Public Interest Companies

Application of Article 8(1), (2) and (3) of the Sustainable Finance Taxonomy Regulation (SFTR)
– Regulation (EU) 2019/2088¹

Introduction

Both at EU and at national level, sustainable finance is increasingly gaining centre stage in the sector and regulatory instruments are becoming applicable during the course of 2021 and continuing in the short term. Since this is a wide and potentially complex new sector, and owing to the pace at which regulatory developments are progressing at EU level, the Authority will be communicating more frequently and consistently to keep the industry up to date, even if regulation is still being formulated, in order facilitate understanding and make industry aware of the direction of travel being adopted.

This circular seeks to inform Financial Market Participants and Financial Advisors with the recent developments and ongoing work of the European Supervisory Authorities (ESAs). The MFSA is closely following the debate and remains committed to actively contribute on the subject in the relevant working groups set up under the ESAs and other fora as required.

Background

Article 8 of the Sustainable Finance Taxonomy Regulation (SFTR), aspects of which shall apply from 1 January 2022, requires undertakings that fall within scope of application of the [Non-Financial Reporting Directive](#) (NFRD) to include information in their non-financial information statements on how, and to what extent, their activities are “associated with” environmentally sustainable economic activities.

Article 8 also requires non-financial undertakings to disclose the proportion of their turnover derived from products or services associated with environmentally sustainable economic activities and the proportion of their capital and operating expenditure related to assets or processes associated with environmentally sustainable economic activities.

The NFRD at present applies to large public interest entities (PIEs) – which may include organisations in the financial and non-financial sectors. It is therefore relevant, to banks, insurers, listed companies and other companies designated by national authorities as public interest companies, in each case if they have more than 500 employees.

¹ REGULATION (EU) 2020/852 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

Article 27 states that the reporting requirements in Article 8 should apply:

- from 1 January 2022, as regards the first two environmental objectives (that is, climate mitigation and climate adaptation); and
- from 1 January 2023 to the other four environmental objectives (water, pollution and control, circular economy, biodiversity)

The Regulation requires the European Commission to adopt, by 1 June 2021, a delegated Act specifying the content and presentation of the information to be disclosed under Article 8, including the methodology to be used.

In July 2020, the Commission consulted on whether the three indicators (turnover, Capex and Opex) against which companies are to disclose the proportion of their activities which are sustainable need to be specified in more detail and whether different indicators should be developed for financial undertakings disclosing under the NFRD (i.e. large banks and insurance companies).

The SFTR also requires the European Supervisory Authorities (i.e. ESMA, EBA and EIOPA) to develop, jointly, regulatory technical standards specifying the details of the presentation and content of the information in relation to the principle of “do no significant harm”.

Advice issued by European Supervisory Authorities to the European Commission

On 15 September 2020, the European Commission called on the three ESAs for advice on the implementation of the requirements under Article 8(1) of the Taxonomy Regulation. The call specifically requested advice on KPIs and methodology on the disclosure on how and to what extent the activities of undertakings that fall within scope of the Non-Financial Reporting Directive qualify as ‘environmentally sustainable’ under the Taxonomy Regulation.

A Consultation Paper was published by the ESAs on 5 November 2020 to seek the views of stakeholders on a [proposal for the advice to be given to the Commission](#). The below summarises the feedback to the consultation and ESAs final advice to the Commission as published on Monday 1st March 2021.

- The European Banking Authority (EBA) [published](#) its advice to the European Commission on Key Performance Indicators (KPIs) and related methodology for the disclosure by credit institutions and by investment firms of information on how and to what extent their activities qualify as ‘environmentally sustainable’ in accordance with the EU Taxonomy. This advice highlights the importance of the Green Asset Ratio in understanding how institutions are meeting Paris Agreement targets. The EBA also defines templates and instructions with the quantitative information used for the calculation of the KPIs. The advice also includes guidance for the disclosure of information for portfolios where disclosures are more challenging due to the location of the counterparty or the variable nature of the portfolio.
- The European Securities and Market Authority (ESMA) [published](#) its recommendation for the European Commission on Article 8 of the Taxonomy Regulation, covering the information to be provided by non-financial undertakings and asset managers under the Non-Financial Reporting Directive (NFRD). For the non-financial undertakings, ESMA’s proposal set out the definition that should be used for the calculation of turnover key performance indicator (KPI), Capital Expenditure (CapEx) KPI and the Operating Expenditure

(OpEx) KPI as well as the minimum information that should accompany these disclosures and the methodology. For asset managers, the proposal sets out the KPIs to be disclosed and the methodology to use, in addition to recommendations for the development of a coefficient methodology to assess Taxonomy-alignment of investments in investee companies that do not report under the NFRD.

- The European Insurance and Occupational Pensions Authority (EIOPA) submitted and [published](#) its technical advice to the European Commission on key performance indicators under article 8 of the Taxonomy Regulation, in response to the Commission's call for advice on the matter. The document proposes two key KPIs on sustainability regarding insurers and reinsurers: the number of taxonomy-aligned activities in terms of non-life gross premium written and the funding or financing of taxonomy-aligned economic activities in relation to the total amount of investments. The authority considers that these proposals will help promoting high-quality non-financial reporting by European insurance and reinsurance undertakings.

Next Steps

- 1 June 2021 – Commission to adopt a delegated act to specify the content and presentation of the information to be disclosed pursuant to Article 8 of the SFTR
- 1 January 2021 – Article 8 becomes applicable with regard to reporting by public interest companies designated under the NFRD on the first two environmental objectives - climate mitigation and climate adaptation – specified under Article 3 of the SFTR
- 1 January 2023 - Article 8 becomes applicable with regard to reporting by public interest companies designated under the NFRD to the other four environmental objectives - water, pollution and control, circular economy, biodiversity – specified under Article 3 of the SFTR.

General Direction

The legislative sustainable finance package currently being implemented by the EU consists of three Regulations:

1. The Sustainable Finance Disclosure Regulations - [REGULATION \(EU\) 2019/2088](#)
2. The Sustainable Finance Taxonomy Regulation - [REGULATION \(EU\) 2020/852](#)
3. The Sustainable Finance Benchmarks Regulation - [REGULATION \(EU\) 2019/2089](#)

The Authority is at this time focusing on the three EU Regulations that become progressively applicable from this month. (Other MFSA Circulars have been issued with regard to the Sustainable Finance Disclosure Regulation (SFDR) which becomes applicable from 10 March 2021). The subject matter of the three Regulations, and particularly, the Disclosure Regulation and the Taxonomy Regulation; are considered to be essential and foundational elements of Sustainable Finance market in the EU.

In this line of work, and with regard to provisions that are yet to become applicable, it is actively working within EU expert and regulatory fora in order to ensure alignment. Engagement with the

industry in this regard will become more frequent in the coming months. The Authority urges all market participants to keep themselves up to date with all the information being disseminated.

In parallel, the Authority is working on the conceptualisation and development of a strategy for Sustainable Finance for Malta with a view to publishing a Concept paper in the near future. The Authority's main aim in this area is to ensure that the market conditions are positive for the harnessing of the EU policy, principles and obligatory concepts and requirements in this area as established by the EU legislative instruments and the National Sustainability Strategy that is being formulated by Government. The Authority's strategy will essentially thus include both national and international objectives and it will engage and consult on concepts and principles in the short term, and longer-term action plan thereafter.