

12 May 2021

Sustainable Finance Disclosure Regulation

Application of Article 17(1) of the Sustainable Finance Disclosure Regulation

Introduction

Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (hereinafter referred to as “Sustainable Finance Disclosure Regulation” or the “SFDR”) commenced to apply on 10 March 2021 with certain obligations commencing to apply at a later date.¹

As at 10 March 2021, Financial Market Participants and Financial Advisers, as defined in the Sustainable Finance Disclosure Regulation are required to disclose information with regards to the integration of sustainability in their investment decision-making process or their investment or insurance advice, the consideration of adverse sustainability impacts in their processes and to provide sustainability related information with respect to financial products.

Background

Article 17(1) of the SFDR exempts insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice that are enterprises irrespective of their legal form, including natural persons and self-employed persons, provided that they employ fewer than three persons. Article 17(2) of the SFDR then provides Member States with the discretion to apply the requirements of SFDR to such entities.

To this end, this Circular seeks to inform Financial Market Participants and Financial Advisers of the Authority’s position under Article 17(2) of the SFDR.

MFSA Position

The Authority, as the Maltese competent authority in terms of the SFDR, will not take the option to apply the SFDR provisions to insurance intermediaries and investment firms which employ fewer than three persons as outlined above. As a result, the SFDR shall not apply to such insurance intermediaries which provide insurance advice with regard to IBIPs and to investment firms which provide investment advice.

It is to be noted that the position of the Authority may be revised in view of future developments in the area of sustainable finance and/ or as the Authority may deem fit.

¹ The Level 2 draft regulatory technical standards (RTS) due to accompany the Level 1 requirements have been delayed, however the Level 1 went ahead and the European Commission has advised that firms will be required to produce “high-level and principle-based” disclosures from the SFDR application date, while the underlying technical standards will come into force at a later date.

This exemption is without prejudice to the application of the provisions of national law transposing MiFID and the Insurance Distribution Directive. Therefore, whilst such advisers will not be required to provide information in accordance with the SFDR, the Authority expects such licence holders to consider and factor in sustainability risks in their advisory processes.

The aim of the SFDR is to strengthen the protection for investors and improve sustainability related disclosures to the said investors. Whilst at this stage, the Authority will be exempting the financial advisers identified above, this needs to be balanced with the requirement to afford the same level of protection and transparency on sustainable disclosures to all investors, irrespective of the type or size of the entity offering the product. As a result, it is imperative that the approach taken by the said advisers is consistent with the aim of the SFDR in terms of avoiding adverse risks.

Way Forward & Contact Points

Further guidance on the SFDR will be issued by the Authority in upcoming Circulars. Should you have any queries in relation to the above, please do not hesitate to contact the Authority on funds@mfsa.mt; InvestmentFirms@mfsa.mt; ips_legal@mfsa.mt and csu@mfsa.mt.