

22 June 2021

## Circular on the Transposition of Directive (EU) 2019/2177

### 1.0 Introduction

[Directive \(EU\) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance \(Solvency II\), Directive 2014/65/EU on markets in financial instruments and Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing](#) (hereinafter referred to as “Directive 2019/2177”) was issued on the 18<sup>th</sup> December 2019. Directive 2019/2177 amends Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (hereinafter referred to as the “Solvency II Directive”).

The purpose of this Circular is to inform the market about the amendments carried out to transpose Directive 2019/2177. The amendments will come in force on the 30 June 2021.

The Solvency II Directive provides that in accordance with the risk-oriented approach to the Solvency Capital Requirement, it is possible in specific circumstances for insurance and reinsurance undertakings and groups to use internal models for the calculation of that requirement, instead of using the standard formula. Directive 2019/2177 will introduce new requirements on the MFSA to inform EIOPA of any applications to use or change an internal model.

Moreover, due to the increase in cross-border activity, the EU Commission sought to strengthen the requirement for information exchange and co-operation between supervisory authorities at the initial stages of authorisation. This is especially important in situations of significant cross-border insurance activity or a crisis situation. In this respect, Directive 2019/2177 introduced new requirements on Notification and Collaboration Platforms.

In light of the above and in an effort to create a more efficient and effective process, the MFSA is also introducing two new forms which are to be compiled when an undertaking which is already licenced, is seeking to establish a branch or provide services in another Member State. The forms have been attached to the Circular for ease of reference.

## 2.0 Amendments to the Insurance Legislation

With the aim of transposing Directive 2019/2177, the MFSA has amended Chapter 1 of the Insurance Rules on The Application Process, Chapter 5 of the Insurance Rules on the Valuation of assets and liabilities, technical provisions, own funds, solvency capital requirement, minimum capital requirements and investment rules, the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations and the European Passport Rights for Insurance and Reinsurance Undertakings Regulations.

### 2.1 Amendments to Chapter 1 of the Insurance Rules on The Application Process

The MFSA has introduced a new section 1.8 entitled 'Notification and Collaboration Platforms' in Chapter 1 of the Insurance Rules, which partially transpose the new Articles 152a and 152b to the Solvency II Directive introduced by Directive 2019/2177. Pursuant to this new section, where the MFSA intends to authorise a re/insurance undertaking with its head office in Malta whose scheme of operations indicates that:

- (a) a part of its activities will be based on the freedom to provide services or the freedom of establishment in another Member State; and
- (b) those activities are likely to be of relevance in another Member State's market,

the MFSA will be required to notify EIOPA and the European regulatory authority of the host Member State where the said undertaking will be conducting its activities during the authorisation process. To this effect, a separate notification form will need to be compiled and sent together with the application pack.

In addition, the new section 1.8 has also introduced a new power wherein the MFSA has the authority to set up a collaboration platform, where it agrees to do so, with other relevant supervisory authorities. The MFSA may also request EIOPA to set up and coordinate a collaboration platform to strengthen the exchange of information and to enhance collaboration between the relevant competent authorities where a re/insurance undertaking with its head office in Malta which intends to carry out activities which are based on the freedom to provide services or the freedom of establishment and where such activities are of relevance with respect to the other Member State's market. The MFSA will also be required to provide EIOPA with all the necessary information in a timely manner to allow for the proper functioning of the collaboration platform.

## 2.2 Chapter 5 of the Insurance Rules on the Valuation of assets and liabilities, technical provisions, own funds, solvency capital requirement, minimum capital requirements and investment rules

The Solvency II Directive allows for insurance and reinsurance undertakings and groups to use internal models for the calculation of the Solvency Capital Requirement, in specific circumstances, instead of using the standard formula and this is in accordance with the risk-oriented approach to the Solvency Capital Requirement. Such amendment also holds that upon the request of one or more supervisory authorities concerned, EIOPA may provide technical assistance to the supervisory authority or authorities which requested the assistance, with respect to the decision on the application. Directive 2019/2177 will be including new requirements on the application for permission to calculate the Solvency Capital Requirement.

In this respect, the MFSA has introduced a new paragraph 5.5.59 to Chapter 5 of the Insurance Rules for the purposes of transposing Article 2(2) of Directive 2019/2177. In light of this amendment, the competent authority will be required to inform EIOPA in accordance with Article 35(1) of [Regulation \(EU\) No 1094/2010](#) of any applications which the competent authority receives to use or change an internal model. Notably, through such a requirement, the MFSA will be allowed to require EIOPA's technical assistance pursuant to Article 8(1)(b) of Regulation (EU) No 1094/2010 with respect to the decision on the application received.

## 2.3 Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations

The MFSA has also amended the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations in order to transpose Articles 2(4) and (5) of Directive 2019/2177. For the purpose of such transposition, regulation 23(2) of the aforementioned Regulations has been amended to include a new requirement. Where the MFSA is a group supervisor and it receives an application for permission to calculate:

- (a) the consolidated group Solvency Capital Requirement, or
- (b) the Solvency Capital Requirement of an authorised insurance undertaking, an authorised reinsurance undertaking, a European re/insurance undertaking, in a group, on the basis of an internal model, submitted by such an undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company,

the competent authority shall inform the other members of the college of supervisors and EIOPA of the receipt of such an application. The competent authority as a group supervisor shall also be required to forward the complete application, including the documentation to the other members of the college of supervisors and EIOPA without delay.

Sub-regulation (5)(b) of regulation 23 of the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations was also amended to transpose Article 2(4)(b) of Directive 2019/2177. The new amendments will state that where EIOPA does not take a decision, as referred to in the second sub-paragraph of Article 231(3) of the Solvency II Directive and in accordance with Article 19(3) of Regulation (EU) No 1094/2010, it will be the group supervisor who shall take a final decision. Where the competent authority is the group supervisor, it will be the competent authority which takes the decision. That decision shall be recognised as determinative and shall be applied by the European regulatory authorities concerned.

Regulation 28(4) was also amended to transpose Article 2(5) of Directive 2019/2177. Regulation 28 deals with the application of a subsidiary to be subject to Article 238 (Subsidiaries of an insurance or reinsurance undertaking: determination of the Solvency Capital Requirement) and Article 239 (Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary) of the Solvency II Directive. The new requirement states that where EIOPA does not take a decision as referred to in sub-regulation (3) in accordance with Article 19 of Regulation (EU) No 1094/2010 the group supervisor shall take the final decision. Where the competent authority is group supervisor, that decision shall be taken by the competent authority, which shall be recognised as determinative and shall be applied by all the regulatory authorities concerned.

Through the amendment of regulation 23(5)(b) of the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, the MFSA has transposed Article 2(4)(b) of Directive 2019/2177 and catered for the situation where the EIOPA does not take a decision on a particular matter whilst the MFSA is occupying the role of 'group supervisor'.

#### 2.4 European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015

The MFSA has also amended the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, by introducing two new parts within the European Passport Rights

for Insurance and Reinsurance Undertakings Regulations; Part V *bis* entitled “Notification and Collaboration Platforms - Maltese Insurance and Maltese Reinsurance Undertakings” and Part V *ter* entitled “Notification and Collaboration Platforms - European Insurance and European Reinsurance Undertakings”.

Part V *bis* introduces two new regulations; 13A and 13B. Regulation 13A requires the MFSA to notify EIOPA and the European regulatory authorities where the MFSA identifies a deteriorating financial condition or other emerging risk posed by a Maltese re/insurance undertaking carrying out activities in exercise of their European rights and which may also have a cross-border effect. The MFSA is required to ensure that the notification is sufficiently detailed to allow for a proper assessment. Furthermore, where no bilateral agreement is reached between the MFSA and the European regulatory authority, the former may refer the matter to EIOPA and request its assistance. Regulation 13B highlights the right for the MFSA to set up a collaboration platform where it agrees to do so with other relevant European regulatory authorities. Furthermore, the competent authority may request EIOPA to set up and coordinate a collaboration platform to strengthen the exchange of information and to enhance collaboration between the relevant European regulatory authorities. The said collaboration platform may be set up where a Maltese re/insurance undertaking carries out activities in exercise of a European right and where:

- (a) such activities are of relevance with respect to another Member State's market;
- (b) a notification has been made by the competent authority of deteriorating financial conditions or other emerging risks (referenced in regulation 13A); or
- (c) the matter has been referred to EIOPA (referenced in regulation 13A).

Moreover, at the request of EIOPA, the MFSA will be bound to provide EIOPA all the necessary information in a timely manner to allow for proper functioning of the collaboration platform.

The MFSA also introduced a new Part V *ter* to the European Passport Rights for Insurance and Reinsurance Undertakings Regulations containing two new regulations, Regulation 13C and Regulation 13D, which will regulate the converse of the above as it lays down the MFSA's obligations when in relation to a European re/insurance undertaking.

### 3.0 Forms to be compiled by licence holders

Finally, the MFSA is also introducing two new forms entitled '[AX20: Passporting Notification for Freedom of Establishment](#)' and '[AX19: Passporting Notification for Freedom of Services](#)', which are accessible from the links above. The former is required to be compiled by a licence holder which intends to operate on a cross-border basis under Freedom of Establishment, whilst the latter form is to be compiled by a licence holder which intends to operate on a cross-border basis under Freedom of Services.

### 4.0 Conclusion

Any queries or requests for clarifications in respect of the above should be sent by email on [ips\\_legal@mfsa.mt](mailto:ips_legal@mfsa.mt).