

9 June 2022

Circular on Commission Delegated Regulation (EU) 2021/1256 amending Delegated Regulation (EU) 2015/35 as regards the Integration of Sustainability Risks in the Governance of Insurance and Reinsurance Undertakings

1.0 Introduction

On 21 April 2021, the European Commission adopted a [package of measures and initiatives related to the EU Sustainable Finance Agenda](#). The aim was to introduce the foundation for an EU framework which prioritizes sustainability considerations in its financial system aligning such system with the [European Green Deal](#) objectives. As part of this initiative, the European Commission adopted [Commission Delegated Regulation \(EU\) 2021/1256](#) amending Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). The amendments in [Commission Delegated Regulation \(EU\) 2021/1256](#) integrate further sustainability risks in the governance of insurance and reinsurance undertakings.

Further to the [Circular](#) issued by the MFSA on 29 April 2021 on Sustainable Finance and EU Taxonomy, this Circular will inform insurance and reinsurance undertakings of the amendments brought about by Commission Delegated Regulation (EU) 2021/1256.

2.0 Amendments to be effected by Commission Delegated Regulation (EU) 2021/1256

2.1 Introduction of new definitions under Article 1(1) of Delegated Regulation (EU) 2015/35

In line with the [technical advice](#) issued by the European Insurance and Occupational Pensions Authority (hereinafter referred to as 'EIOPA'), Commission Delegated Regulation (EU) 2021/1256 will introduce three new definitions under Article 1(1) of Delegated Regulation (EU) 2015/35:

- 'sustainability risks';
- 'sustainability factors'; and
- 'sustainability preferences'

The aim behind the introduction of these definitions is that of providing further clarifications in relation to the integration of sustainability considerations in the investment, advisory and disclosure processes in the insurance industry.

The definition of 'sustainability risks', which is aligned with the definition found in Regulation (EU) 2019/2088, states that sustainability risks are environmental, social or governance events or conditions that, if in occurrence, could cause an actual or a potential negative impact on the value of the investment or on the value of the liability.

With respect to the term 'sustainability factors', these are also aligned with the definitions in the SFDR, which defines this term as environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.

The definition of the term 'sustainability preferences' is defined as a customer's or potential customer's choice as to whether and, if so, to what extent, one or more of the financial instruments listed in the definition could be integrated into the customer's investment.

2.2 Amendments to Article 260 of Delegated Regulation (EU) 2015/35

Commission Delegated Regulation (EU) 2021/1256 will also amend Article 260 of Delegated Regulation (EU) 2015/35 on Risk management areas. The aim of this amendment is to require insurance and reinsurance undertakings to reflect sustainability risks in their risk management policies.

2.2.1 Underwriting and Reserving

The amendment will ensure that an insurance and reinsurance undertaking which discloses principal adverse impacts on sustainability factors in accordance with Regulation (EU) 2019/2088 also adapts their processes, systems and internal controls to take into account those disclosures. In this respect, the new amendment will require an insurance and reinsurance undertaking to assess and manage the risk of loss or of adverse change in the values of insurance and reinsurance liabilities, resulting from inadequate pricing and provisioning assumptions due to internal or external factors, including sustainability risks.

2.2.2 Investment Risk Management

Article 260 of Delegated Regulation (EU) 2015/35 was also amended to include a new point (vi). The new amendment will require that within the investment risk management policy, an insurance or reinsurance undertaking ensures that proper actions are taken so that sustainability risks relating to the investment portfolio are properly identified, assessed, and managed. In order to further emphasize the importance of integrating sustainability risks in insurance and reinsurance undertakings' risk management, a new paragraph (1a) was also included to require an insurance and reinsurance undertaking to integrate sustainability risks in their underwriting and reserving policy, asset-liability management policy and investment risk management policy.

2.3 Amendments to Article 269 of Delegated Regulation (EU) 2015/35

Commission Delegated Regulation (EU) 2021/1256 has also amended Article 269 of Delegated Regulation (EU) 2015/35 on the Risk Management Function in order to include in the current tasks of the Risk Management Function, identifying and assessing "sustainability risks" apart from emerging risks. A new paragraph (1a) has also been included in order to clarify that the emerging risks and the sustainability risks which are identified by the Risk Management Function, shall form part of the risks which the insurance or reinsurance undertaking is or could be exposed to, taking into account potential future changes in its risk profile due to the insurance or reinsurance undertaking's business strategy or the economic and financial environment, including operational risks.

2.4 Amendment to Article 272(6) of Delegated Regulation (EU) 2015/35

In order to ensure the integration of sustainability risks in the governance of insurance and reinsurance undertakings, particularly with respect to the Actuarial Function, Article 272 (6)(b) of Delegated Regulation (EU) 2015/35 has been amended accordingly. The aim behind this amendment is to include the sustainability risks consideration in the opinion to be expressed by the Actuarial Function in respect of the underwriting policy.

2.5 Addition of point (4) to Article 275 of Delegated Regulation (EU) 2015/35

In order to ensure that climate and environmental risk are managed and integrated into the financial system, remuneration policies of insurance and reinsurance undertakings will now also require to take into account the integration of sustainability risks in their risk

management systems. In this respect, a new paragraph will be included in Article 275 of Delegated Regulation (EU) 2015/35, on Remuneration policies. The new amendment will require insurance and reinsurance undertakings, to amend their remuneration policies to include information as to how the said policy takes into account the integration of sustainability risks in the risk management system.

2.6 Inclusion of a new Section 6 on investments in Chapter IX of Title I of Delegated Regulation (EU) 2015/35

Commission Delegated Regulation (EU) 2021/1256 will also be including a new section on investments under the Chapter dealing with insurance and reinsurance undertakings' systems of governance under Delegated Regulation (EU) 2015/35. The inclusion of this section will ensure that insurance and reinsurance undertakings effectively manage climate and environmental risks. This will be achieved by including sustainability risks in the implementation of the prudent person principle. Insurance and reinsurance undertakings will be required to reflect, in their investment process, the sustainability preference of their customers whilst taking into account the approval process of the said undertaking, and will also be reflected in the product approval process of the undertaking. In this respect, the new Article 275a of Delegated Regulation (EU) 2015/35 requires insurance and reinsurance undertakings to take into account sustainability risks, when identifying, measuring, monitoring, managing, controlling, reporting and assessing risks arising from investments, in accordance with the [Solvency II Directive](#). Furthermore, insurance and reinsurance undertakings shall also be required to consider the potential long-term impact of their investment strategy and decisions on sustainability factors and, where relevant, that strategy and the decisions of such undertakings shall reflect the sustainability preferences of their customers.

3.0 Conclusion

The amendments brought about by Commission Delegated Regulation (EU) 2021/1256 shall enter into force on **2 August 2022**. Insurance and reinsurance undertakings are expected to ensure that their policies have been updated and approved by the Board of Directors in line with the amendments identified above and ensure that the said documents are readily available to the MFSA upon request following this date.

Any queries or requests for clarifications in respect of the above should be sent by email on ips_legal@mfsa.mt.