

02 October 2023

Sustainable Finance Disclosures Regulation (SFDR) – Reminder on the Implications of the SFDR Level 2 Provisions in the Area of Asset Management

The MFSA has published various circulars concerning the SFDR, including its scope, requirements and application timelines. Particularly, in 2022 the Authority had issued a [Circular dated 22 April 2022](#) and [Circular dated 28 June 2022](#) to notify the industry about the adoption of [Commission Delegated Regulation \(EU\) 2022/1288](#) of 6 April 2022 (SFDR RTSs), and further ESAs clarifications on the disclosures under SFDR RTSs.

The sustainable finance framework is continuously evolving, and the European Commission is making ongoing efforts to enhance and clarify the regulatory provisions in this area. These efforts are aimed to ensure transparency and comparability of the information provided to the investors.

The aim of this Circular is to highlight some salient aspects of the SFDR RTSs, which require further attention of the licence holders.

Pre-Contractual Disclosures

The two core legislative acts in the area of sustainable finance¹, which have a significant impact on the asset management sector, have been in force as of 10 March 2021 and 1 January 2022. The level 2 requirements under SFDR (the SFDR RTSs), have been applicable from 1 January 2023 and have been further amended on 20 February 2023 by means of the Commission Delegated Regulation (EU) 2023/363.

The Authority had previously highlighted that the legislative developments emanating from the SFDR RTSs would introduce extensive additional pre-contractual disclosure requirements to be disclosed in the offering documentation of investment funds. Some of the key changes include:

¹ These are the Sustainable Finance Disclosures Regulation (SFDR) and the Taxonomy Regulation.

- harmonisation of the format, in which the statement regarding the consideration of principal adverse impacts on sustainability factors under Article 4 of SFDR shall be presented;
- clarification of the content and presentation of the pre-contractual information for investment funds that are subject to Article 8 and Article 9 of the SFDR, including Taxonomy-related disclosures.

In particular, the investment funds that are subject to Article 8 and Article 9 of the SFDR are now required to present pre-contractual disclosures by completing relevant template set out in Annex II or Annex III to the SFDR RTS. Fund Managers are expected to attach the Annex to the offering documentation of the investment fund and include a prominent statement about the additional information provided in the Annex within the text of the offering documentation.

Website Disclosures

On 12 April 2023, the Authority issued the [Nature and Art of Financial Supervision Volume VII: Initial Study on Sustainability-Related Website Disclosures in Terms of the SFDR](#), which provides high-level observations and recommendations regarding website disclosures based on the SFDR Level 1 provisions. This should be read in conjunction with the SFDR RTSs, in particular, the additional requirements on the structure of the website disclosures, including designation of separate sections for certain disclosures.

MFSA Expectations

The Fund Managers are encouraged to prioritise compliance with already existing regulatory requirements by revisiting and updating, where necessary, the pre-contractual and website disclosures to ensure their appropriateness to the fund in question. In particular, pre-contractual documents of the funds, designated as Article 8 or Article 9, shall be reviewed and updated as necessary to ensure, among others, that the investment policies and strategies disclosures are consistent with the disclosures, included in the relevant Annexes of the SFDR RTSs.

The above considerations equally apply to self-managed schemes that are considered financial market participants in terms of the SFDR.

The recommendations found in the MFSA Nature & Art Document may be useful not only when further updating the website disclosures, but also when revisiting statements and disclosures in the pre-contractual documentation of investment funds².

Revision of Fund Offering Documentation

The Fund Managers are also reminded that information should be disclosed in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear and not misleading. In this respect, we would like to note that point 28 of the [ESMA Supervisory Briefing](#) lays down criteria, according to which the presentation of disclosures under SFDR is considered to be clear, succinct, fair and not misleading. With reference to point 33 of the Supervisory Briefing, Fund Managers are further reminded that the sustainable objectives or characteristics of the fund shall be clearly identified and general expressions without any further specification should be avoided.

Further to the above, any changes to the offering documentation of a Scheme and its Sub-Funds (if applicable) shall be submitted for the Authority's approval to ausecurities@mfsa.mt.

In case of any queries regarding the above, please do not hesitate to contact the Authority on IFFsustainablefinance@mfsa.mt.

² Particularly, the Nature and Art Document highlights mandatory nature of the assessment of sustainability risks, which assessment has to be clearly documented. Sustainability risks may be relevant for all funds managed, including those not falling under Article 8 or 9 of SFDR. As a result, fund managers shall establish, implement and maintain processes that provide the identification and the management of the relevant sustainability risks for each fund under management from the design phase and throughout the entire product life cycle.

The document also outlines some key elements to consider, when disclosing investment strategy in clear manner.