

20 November 2024

## Implementation of Various EBA & ESMA Guidelines

### 1. Background

The purpose of this Circular is to inform the industry of various amendments to the Investment Services Rules for Investment Services Providers to implement 8 ESA Guidelines into the national regulatory framework, namely:

- [Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap;](#)
- [Guidelines on the data collection exercises regarding high earners;](#)
- [Joint EBA and ESMA Guidelines on common procedures and methodologies for the supervisory review and evaluation process \(SREP\);](#)
- [Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43\(4\) of Regulation \(EU\) 2019/2033;](#)
- [Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive \(EU\) 2019/2034;](#)
- [Guidelines on resubmission of historical data under the EBA reporting framework;](#)
- [Guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings under Article 21b of Directive 2013/36/EU;](#)
- [Guidelines on funds' names using ESG or sustainability-related terms.](#)

The Rules implementing these Guidelines consist of changes to Part A, Part BI, Part BII and Part BIII applicable to Investment Services Licence Holders and can be found in [Annex A](#).

### 2. Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap

The MFSA is tasked with collecting remuneration data from at least the three largest investment firms in terms of asset volume in Malta, ensuring where possible a coverage of at least 50% of the total asset volume of all investment firms.

The MFSA is also tasked with collecting gender pay gap data on an individual basis from investment firms from which they collect remuneration data, i.e. the investment firms

responsible for the consolidation of data under Article 7 of the Investment Firms Regulation (“IFR”) or the individual investment firms included in the sample mentioned in the previous paragraph for remuneration benchmarking that are subject to Articles 30 and 32 of the Investment Firms Directive (“IFD”).

In this regard, the MFSA collects at an individual level gender pay gap data from investment firms which have at least 50 employees, excluding the members of the management body in its supervisory function.

Moreover, the MFSA endeavours to collect gender pay gap data from at least five investment firms to which Article 32(1), points (j) and (l), and Article 32(3), third subparagraph of the IFD apply and at least five investment firms to which these provisions do not apply in accordance with the derogation in Article 32(4)(a) of the IFD.

These investment firms have to submit such data in XBRL format to the MFSA via the LH Portal by 15 June of each calendar year using the templates developed by the EBA if requested by the MFSA via email.

### **3. Guidelines on the data collection exercises regarding high earners**

The EBA’s objective of the data collection on high earners is to analyse and publish year-to-year developments in relation to the number of individuals in institutions and investment firms earning at least EUR 1 million within the EU and within the different Member States, and to assess the major components of remuneration awarded to high earners in different business areas.

The MFSA, using EBA issued templates, will collect information on the number of natural persons per investment firm remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million and other relevant information by 15 June annually. The MFSA will aggregate the data and then forward it to the EBA by 31 July each year. The EBA shall publish it on an aggregate home Member State basis in a common reporting format.

### **4. Joint EBA and ESMA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)**

The supervisory review and evaluation process (SREP) is one of the main tools for supervision, through which NCAs form a comprehensive view on the business model and risk profile of the supervised entity, as well as its overall viability and sustainability.

The guidelines specify common procedures and methodologies for SREP which are proportionate to the different sizes and business models of investment firms, and the nature, scale and complexity of their activities. In particular, investment firms are classified

into four distinct categories, which translate into different frequency, depth and intensity of the assessments, and the engagement of the competent authority.

As required by IFR/D, the MFSA will apply SREP to investment firms as necessary.

## **5. Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of Regulation (EU) 2019/2033**

The IFR introduced mandatory liquidity requirements for all investment firms, however, Class 3 investment firms, the smallest category, may be exempted from such requirements if certain criteria are met.

The guidelines set out which activities may be exempted, the criteria for the exemption, and guidance for NCAs on how to grant and withdraw the exemption.

The amended Rule in Part BI states that the licence holder is required to formally request a derogation and state its case as per the Guidelines. If anything changes in relation to such assessment for at least 30 calendar days, the licence holder must inform the MFSA to confirm that the derogation still applies. It remains the Authority's discretion whether to grant the derogation.

## **6. Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive (EU) 2019/2034**

The Guidelines are necessary to ensure harmonised benchmarking of diversity practices, including the composition of the management body, diversity policies and the gender pay gap at the level of the management body of institutions and investment firms. The benchmarking of diversity practices will allow the MFSA to monitor diversity trends over time, including the identification of common practices for diversity policies and information on the gender pay gap at the level of the management body.

The EBA has developed templates for the reporting of such data.

Further to EBA guidance, the Authority has to choose a representative sample of investment firms to report such data. Such investment firms should submit the requested data on an individual basis to the MFSA by 30 April every 3 years, starting from 2025 with a reference date of 31 December 2024 if requested by the MFSA via email.

## **7. Guidelines on resubmission of historical data under the EBA reporting framework**

The purpose of these Guidelines is to ensure that the regulatory reporting framework remains effective and efficient. These guidelines set out a common approach to the resubmission by the investment firms of historical data to the MFSA in case there are errors, inaccuracies or other changes in the data reported.

The general approach for the resubmission of historical data envisaged depends on the frequency of the original reporting affected by the corrections and the reference dates affected by the errors or inaccuracies that require corrections and resubmissions. Under this general approach, investment firms are expected to resubmit the corrected data for the current reporting date and historical data for past reference dates going back at least one calendar year.

The guidelines detail when resubmission is necessary. The guidelines also set out general circumstances when the resubmission of historical data may not be required. Resubmissions may happen either on the initiative of the investment firm, or the EBA, or the NCAs.

The resubmission of data, irrespective of how it's triggered, should follow the Guidelines.

## **8. Guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings under Article 21b of Directive 2013/36/EU**

Article 21b of the Capital Requirements Directive introduced a requirement for investment firms belonging to third country groups to have an intermediate EU parent undertaking (IPU) established in the EU, where the total value of assets in the EU of the third-country group is equal to or greater than EUR 40 billion.

Investment firms should assess at least annually whether the threshold is expected to be reached within the three-year horizon, based on the strategic planning of the third-country group and the forecast of assets.

Any impacted investment firms shall submit the [MFSA Annex I – MFSA Template for IPU Threshold Monitoring](#) by 26 May annually using the information as of the previous 31 December.

## 9. Guidelines on funds' names using ESG or sustainability-related terms

In May 2024, ESMA issued guidelines to counter greenwashing by setting clear rules for using ESG and sustainability-related terms in fund names. Under these rules, funds labelled as “sustainable” or “ESG” must invest at least 80% of their assets in accordance with specified environmental, social, or governance characteristics or objectives under the Sustainable Finance Disclosure Regulation (SFDR). This ensures that investors can trust that these funds genuinely support sustainable strategies, rather than using ESG terminology as a marketing tool

The Authority had already issued a [circular](#) in June 2024 to bring these Guidelines to the attention of the industry.

New licence holders in scope of the Guidelines will be required to ensure that the prospectus or offering documentation of the funds they manage contain clear disclosures reflecting the Guidelines as applicable to the fund in question. Current licence holders in scope of the guidelines will be assessed during supervisory interactions.

## 10. Conclusion

Should you have any queries on the contents of this circular, please contact the Investment Services Supervision Function on [isspolicy@mfsa.mt](mailto:isspolicy@mfsa.mt).