


Response Form to the Consultation Paper

Draft Guidelines on Enforcement of Sustainability Information (GLESI)



Responding to this paper

ESMA invites comments on all matters in *Consultation Paper – Draft Guidelines on Enforcement of Sustainability Information* (ESMA32-992851010-1016) and in particular on the specific questions summarised in Annex III of the Consultation Paper and included in this response form. Comments are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by 15 March 2024.

All contributions should be submitted online at www.esma.europa.eu under the heading “Open consultations” □ “Consultation on draft Guidelines on Enforcement of Sustainability Information”.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_GLESI_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_GLESI_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_GLESI_ABCD_RESPONSEFORM.

5. Upload the form containing your responses, **in Word format**, to ESMA's website (www.esma.europa.eu under the heading "Open consultations" "Consultation on draft Guidelines on Enforcement of Sustainability Information").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

This consultation paper will be of interest to listed undertakings required to publish sustainability information by the Corporate Sustainability Reporting Directive and Article 8 of the Taxonomy Regulation, to investors and other users of sustainability information and to auditors and independent assurance services providers.

General information about respondent

Name of the company / organisation	European Contact Group
Activity	Audit/Legal/Individual
Are you representing an association?	<input checked="" type="checkbox"/>
Country / region	Europe

Questions

Q1 Do you have comments on the proposed scope of the GLESI? If yes, please explain your views and provide alternative suggestions where needed.

<ESMA_QUESTION_GLESI_1>

The scope of GLESI is by definition limited to issuers with securities admitted to trading on regulated markets in the EU. The scope of CSRD is much broader, including large private entities. For clarity, the GLESI should further emphasise that they are only applicable to sustainability reporting by such issuers, not to reporting by all companies subject to CSRD. Enforcement reports from national competent authorities as well as ESMA reports on enforcement across the EU should also reflect this.

<ESMA_QUESTION_GLESI_1>

Q2 Should any further legislative references be added to section 2.1 of the GLESI? If yes, please explain which ones and why.

<ESMA_QUESTION_GLESI_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_2>

Q3 Should any other abbreviations be added to section 2.2 of the GLESI? If yes, please explain which ones and why.

<ESMA_QUESTION_GLESI_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_3>

Q4 Do you agree with the definitions ESMA proposes for inclusion in section 2.3 of the GLESI? Has ESMA covered all the concepts that need to be defined? If not, please explain your concerns and propose how to address them.

<ESMA_QUESTION_GLESI_4>

As an overall comment on the approach taken to align GLESI with ESMA's existing Guidelines on Enforcement of Financial Information (GLEFI), while we support ESMA's aim to contribute to bringing sustainability information on a par with financial information, we question whether this strict alignment is appropriate given the inherent differences between financial reporting and sustainability reporting (the heterogeneity and double materiality lens of sustainability information, the fact that it is not all combined in overviews expressed in monetary terms and, importantly, that sustainability reporting is aimed at a range of different users) and the different levels of maturity of collecting, processing and assessing sustainability data, compared to financial data.

We note that the Transparency Directive requires ESMA to issue guidelines on the supervision of sustainability reporting by national competent authorities. We question whether changing the EU legislators' wording from "supervision" to "enforcement" to align with GLEFI does not risk losing the preventive aspects of supervision, aimed at sharing knowledge and views to promote consistent compliance.

We suggest adding definitions of a "material" or "immaterial" omission or misstatement in an issuers' sustainability information, referring also to EFRAG guidance on materiality assessments. Further guidance on how a "material omission" or "material misstatement" should be interpreted for the purpose of enforcement activity would be helpful.

To address non-EU issuers, we suggest adding, to the definition of sustainability information framework, frameworks that the Commission determines are equivalent.

<ESMA_QUESTION_GLESI_4>

Q5 Do you agree with the proposed purpose of the GLESI? If not, please explain why and make a proposal for what should change.

<ESMA_QUESTION_GLESI_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_5>

Q6 Do you have any remarks on the compliance and reporting obligations?

<ESMA_QUESTION_GLESI_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_6>

Q7 Do you agree with the proposed objective of the enforcement of sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_7>

Guideline 1 appears to set as an objective the consistent application of the sustainability information framework by different issuers, to allow comparability between their sustainability information. This may not sufficiently acknowledge that companies', and where relevant, groups', sustainability reporting will depend on their own specific circumstances and that issuers' materiality assessments may differ considerably. We suggest that guideline 1 should further set out what is meant by consistent application of the sustainability information framework.

We would support the guideline recommending (instead of allowing, under paragraph 19) that supervisors seek to encourage compliance by issuing alerts and other publications, developed where applicable through the SRWG set up by ESMA, to assist issuers in preparing their sustainability statement in accordance with the sustainability information framework.

We believe that as issuers embark on this very significant (next) step in sustainability reporting, supervisors/enforcer should exercise this important role as an improvement regulator, seeking to pro-actively and ex-ante act to help develop sustainability reporting.

<ESMA_QUESTION_GLESI_7>

Q8 Do you agree with the draft Guideline 2 on how enforcers should ensure that they have an effective process for enforcing sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_8>

Q9 Do you agree with the draft Guideline 3 on enforcement of sustainability information prepared under equivalent third country sustainability reporting requirements? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_9>

Q10 Do you agree with the draft Guideline 4 on the independence of enforcers? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_10>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_10>

Q11 Do you agree with the draft Guideline 5 on the mixed selection model? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_11>

Q12 Do you agree with the draft Guideline 6 on the timing of the selection model? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_12>

Q13 Do you agree with the proposed Guideline 7 on the selection universe? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_13>

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<ESMA_QUESTION_GLESI_13>

Q14 Do you agree with the draft Guideline 8 on the four types of examination enforcers can use when they examine sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_14>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_14>

Q15 Do you agree with the draft Guideline 9 which addresses the enforcer's examination process? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_15>

We suggest that the enforcer's examination process should also include informing the assurance provider for the sustainability information about any issues identified, to allow both the issuer and the assurance provider to engage with the enforcer on this topic, and in any event ahead of applying any enforcement action. Similarly, where different from the assurance service provider, the financial statement auditor should also be informed about any issues identified, due to the connectivity between the sustainability information and the financial statements.

It is crucial that enforcement actions appropriately take into consideration that the CSRD and ESRS have brought in a new sustainability reporting regime and that, in the same way as enforcers' experience will grow as mentioned in Guideline 2, issuers experience with collecting and processing sustainability data and sustainability reporting will also grow over time. Enforcements actions should reflect this situation.

<ESMA_QUESTION_GLESI_15>

Q16 Do you agree with the draft Guideline 10 which presents the conditions which enforcers should apply when they offer their issuers pre-clearance of sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_16>

Q17 Do you agree with the draft Guideline 11 which requires enforcers to undertake quality reviews of their enforcement processes? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_17>

Q18 Do you agree with the draft Guideline 12 which presents the considerations enforcers should apply when they identify an infringement in the sustainability information and have to determine which enforcement action to use? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_18>

We support the proposal that similar actions should be used where similar infringements are detected, after considering materiality, and suggest specifying that this applies not only within a national competent authority but among national competent authorities across the EU.

The priority for enforcement action should be for infringements that undermine the overall sustainability reporting.

<ESMA_QUESTION_GLESI_18>

Q19 Do you agree with the draft Guideline 13 which clarifies the approach to materiality in the enforcement of sustainability information? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_19>

Q20 Do you agree with the draft Guideline 14 which establishes that enforcers should check whether issuers took appropriate action when they were subject to an enforcement action? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GLESI_20>

Q21 Do you agree with the proposed requirements for how to coordinate enforcement of sustainability information at a European level in draft Guidelines 15, 16, 17, 18, 19 and 20? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_21>

We support measures coordinating at EU level enforcement of sustainability information.

Regarding the material controversial reporting issues and ambiguities discovered during the enforcement process, to be shared by ESMA with the European Commission, we suggest that such information should also be shared in a timely manner with assurance providers, as an ex ante measure that can contribute effectively to the consistency of sustainability reporting with the sustainability information framework.

More broadly, we believe that regular dialogue between ESMA/national competent authorities and the audit profession/other assurance and verifiers, also at a national level, will be very helpful to share findings and exchange on issues encountered, with the ultimate aim of supporting decision-useful sustainability reporting in the EU.

<ESMA_QUESTION_GLESI_21>

Q22 Do you agree that it is useful to publish extracts of decisions taken by enforcers, as required by draft Guideline 21, and to report on enforcement activities at national and European level, as required by draft Guideline 22? If not, please explain why and provide suggestions for amendments.

<ESMA_QUESTION_GLESI_22>

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<ESMA_QUESTION_GLESI_22>

Q23 Do you agree that the proposed policy option 1 is preferable from a cost-benefit perspective? If not, please explain. If yes, have you identified other benefits and costs which are not mentioned above?

<ESMA_QUESTION_GLESI_23>

While many of the key elements of GLEFI are relevant, in our view, policy option 1 as followed in these draft GLESI is not sufficient. As mentioned in our reply to Q4 above, the different nature of sustainability information, including the double materiality aspect of sustainability reporting, are not yet reflected in these draft GLESI which in our view require further development to be appropriate to serve to guide assessments of whether issuers' published sustainability information is in accordance with the sustainability information framework.

<ESMA_QUESTION_GLESI_23>

Q24 If you advocate for a different policy option, how would it impact the benefits and costs? Please provide details.

<ESMA_QUESTION_GLESI_24>

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<ESMA_QUESTION_GLESI_24>

Q25 Do you wish to raise any other points which ESMA should consider as it finalises the guidelines?

<ESMA_QUESTION_GLESI_25>

We suggest that ESMA provide a process and timing for annual review and adaptation of GLESI, following due public consultation, due to the newness of sustainability reporting and to stay on top of emerging issues as they arise.

<ESMA_QUESTION_GLESI_25>